Scientific Approaches to Juvenile Delinquency and Criminality

M. C. Bassiouni

Alan F. Sewell

Follow this and additional works at: https://via.library.dePaul.edu/law-review

Recommended Citation

Available at: https://via.library.dePaul.edu/law-review/vol23/iss4/3

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.
SCIENTIFIC APPROACHES TO JUVENILE DELINQUENCY AND CRIMINALITY

M. C. Bassiouni*

Alan F. Sewell**

The authors assert that the rehabilitation of juvenile and adult offenders is based upon theories of juvenile delinquency and criminality which do not comport with the developing consensus among various scientific theories of human behavior. In a study which analyzes and synthesizes the major scientific theories of deviant human behavior, the authors suggest the need for imparting a modern scientific base to juvenile delinquency and rehabilitation.

TABLE OF CONTENTS

I. DEVIANCE AND THE LAW ........................................................................................................ 1346
II. CONSTITUTIONAL THEORIES—THE BIOLOGICAL APPROACH ........................................... 1352
   A. STRICT CONSTITUTIONAL THEORIES .............................................................................. 1353
   B. NEUROLOGICAL THEORIES .......................................................................................... 1355
   C. GENETIC THEORIES ....................................................................................................... 1357
      1. CHROMOSOMAL ANOMALIES ..................................................................................... 1358
      2. GENETIC CRIMINALITY ............................................................................................ 1363
III. ENVIRONMENTAL THEORIES—THE SOCIOLOGICAL APPROACH ..................................... 1365
    A. STRICT SOCIOLOGICAL THEORIES ............................................................................... 1366
       1. SOCIAL STRUCTURE THEORY .................................................................................... 1366
       2. SOCIAL CONTROL THEORIES .................................................................................. 1370
       3. NORMS, VALUES, AND THE STRICT SOCIOLOGICAL APPROACH ........................ 1374
    B. PSYCHOLOGICAL AND SOCIAL-PSYCHOLOGICAL THEORIES .................................... 1375
       1. PSYCHOLOGICAL THEORY: DELINQUENCY AS A PERSONALITY DISORDER ........ 1375
       2. SOCIAL-PSYCHOLOGICAL THEORY: DELINQUENCY AS DEVIANT SELF-CONCEPTION 1384
       3. BEHAVIORISTIC THEORY: DELINQUENCY AS CONDITIONING ............................ 1389
IV. INTERACTIVE THEORIES—THE BIOSOCIAL OR ETHOLOGICAL APPROACH ....................... 1391
   A. THE "CRITICAL PERIOD" CONCEPT .............................................................................. 1392
   B. THE "FRUSTRATION-AGGRESSION" CONCEPT ............................................................ 1396
V. CONCLUSIONS .......................................................................................................................... 1401

* Professor of Law, DePaul University College of Law.
** Assistant Professor of Psychology, DePaul University. The authors acknowledge the research assistance of Johannes Feest, Research Associate in Criminology, The Max Planck Institute, Freiburg, Germany.
A growing rapprochement among behavioral disciplines is emerging as a result of scientific developments in human behavior research. Emerging is a progressively more deterministic view of human behavior. Sociology, psychology, and psychiatry are gradually generating a theoretical framework which takes into account the findings and theories of disciplines less committed to environmentalist viewpoints. Similarly, biologists, having become more oriented to ethological studies, are developing theories which extend beyond the mechanical functions of the body. These developments will eventually exert a profound effect upon the law and its institutions, requiring legal theorists to reconsider traditional assumptions about human behavior and the establishment and maintenance of social institutions. The purpose of this Article is to describe this developing trend between behavioral and social science disciplines and to consider its implications to the laws relating to juvenile delinquency and criminality.

The first section of this study briefly describes the basic assumptions of the law in respect to deviance. Next, the findings and theories attributable to several disciplines are outlined and discussed in terms of three positions on the hereditary-environment continuum: (1) constitutional theories of crime and delinquency—the biological approach; (2) environmental theories of crime and delinquency—the sociological approach; (3) interactive theories—the psychological-ethological approach. In none of these cases has an exhaustive review been attempted; rather, a highly selective review of crucial theories and findings are used to provide illustrations of current and projected directions of theory and research into sources of deviant behavior. These theories apply to juveniles as well as adult deviant behavior which is characterized as criminal. The perceived rapprochement of scientific theories regarding human behavior leads to a number of specific conclusions and recommendations which are postulated as a basis for a revised conceptualization of criminality, delinquency, and the rehabilitative-resocialization process.

1. See discussion pp. 1365-91 infra.
I. DEVIANCE AND THE LAW

Giving a substantive definition to "juvenile delinquency" is difficult because laws arbitrarily classify a person below a certain age as "juvenile," and attribute various meanings to "delinquency." Whether delinquency is the status of a person or a label for specific behavior depends upon the value-oriented goal of the inquiry. To most scientists "delinquency" is either the behavior of a person at a given time (irrespective of whether the conduct is violative of the law and regardless of the condition of the individual, save for psychiatric disturbances), or it is the condition which brought about the conduct of the actor in question. From these contrasting viewpoints emerge as many definitions of "juvenile delinquency" as there are purposes for characterizing the condition and behavior of a minor. The common denominator of all definitions and studies in this area is their reference to persons below a certain age. Age is usually the only common factor to a plethora of works produced on the subject, regardless of the disciplines from which they emanate. These variations and divergences are as wide as the theoretical barriers existing between social and behavioral scientists. The definition of "delinquency" will depend, in the final analysis, on the value-oriented goal of the particular disciplinary framework within which it is formulated. The significance of the difference between these definitions is measured by the range of such disciplines.

In general, the legal definition of "juvenile delinquency," as defined in statutes, codes, and ordinances, is criminal or quasi-criminal conduct performed by persons of a certain age and which is referred to a juvenile court. The precise legal definition, which varies from state to state, may include traffic violations, truancy, ungovernable behavior, running away, curfew violation, and other regulatory measures applicable to the control of behavior of persons below a certain age. As such it has little or no relationship to adult criminality. Invariably, "juvenile delinquency," similar to adult criminality, is based on a concept of culpable responsibility which is predicated on a social standard of "reasonable" or "normal" behavior. This concept of responsibility presupposes that deviation from such a standard is the product of free will and intentional choice. It is this assumption that the scientific approaches challenge.
Law as a discipline within the social sciences has as its prime objective the regulation of certain aspects of interpersonal and intersocial relations. This objective is pursued by articulating mandates which provide legally enforceable sanctions. Criminal law does not differ from any other body of law except for its coercive sanctions. Certainly its purposes will differ according to the type of human activity sought to be regulated, but historically criminal law has almost exclusively been concerned with the maintenance of "public order," and, as such, it reflects the position that only conduct violative of public order is subject to its mandates. Hence, a person whose manifested conduct violates a criminal law is subject to its processes, and only when the vagaries of the criminal justice processes "catch up" with him, is he deemed a criminal. Notwithstanding the transactional nature of criminal law, a distinction is made between adults and non-adults engaging in the same prohibited conduct. This distinction is based upon the assumption that persons below a certain age do not act out of deep-seated criminality and are by reason of their immaturity (age) more amenable to rehabilitative efforts than adults.

This notion, even though quite old, is not based on a sound scientific foundation. The Justinian Code established the first age requirement for determining criminal responsibility. Infants were presumed incapable of malitia praecogitata and their conduct, otherwise criminal if they would have been adults, was viewed differently by the law. It was not until penal reformists, such as Beccaria in Europe and Bentham in England, undertook to question the merits of cruel and physical punishment that distinctions between adults and juveniles were made.

It has been stated that one of the reasons for an age distinction

3. But see id. at 9-11.
between adult and juvenile offenders is the historic corollary of guilt and punishment. The more stern the punishment, the less likely were lawmakers to include minors or infants within the group definable as "guilty." Thus, delinquency became a secondary form of guilty, and its consequently established corollary was not punishment, but correction and rehabilitation. Delinquency became associated with what had been referred to as "corrective justice" in its narrowest form. The emergence of penal and correctional reforms emphasized rehabilitative theory while theoretically eliminating, or at least reducing, the recognition given the retributive theory. However, the correctional system employed in the United States (and in most countries of the world) consists of nothing more than custodial institutions often of subhuman conditions which foster deviance.

Parallel to the development of humanitarian concern for the "criminal" was the emergence of specialized substantive and procedural legislation for juveniles. Since no real scientific basis existed for differentiating between adults and juveniles as to the causes of their conduct, the terms "delinquent" and "criminal" were still used to distinguish between age group and places of confinement. It is, however, unwarranted to assume that a real scientific distinction exists between adult and juvenile detentional and correctional institutions under present conditions throughout most of the United States, although some notable exceptions giving credence to the distinction between the two systems exist.

By the mid 1960's, crime statistics showed that one-half of all crimes were committed by persons under the age of twenty-one with most of that group consisting of individuals to whom the legal definition of "juvenile delinquent" could apply. Yet only a relatively small number of institutionalized offenders were in public institutions designed for "juveniles." Serious crimes increased in the sixties by 148 percent, while population increased only 13 percent. To compound the situation, only an estimated 50 percent

of violent crimes committed in the United States were reported, 25 percent of which were prosecuted, 6 percent of which resulted in convictions, and 1 percent of which resulted in confinement. The recidivism rate was estimated as ranging between 65 and 80 percent. These statistics are, however, somewhat misleading, particularly because of the "overcriminalization" and "overreach" of criminal laws in the mid-sixties.

Demographers predict that by the mid-seventies over one-half of the population of the United States will be under thirty years of age. This demographic transformation will affect both crime and delinquency statistics, and the crime rate of the seventies will therefore reflect proportionate increases within age groups. Thus statisticians can be expected to report an increase in juvenile delinquency. Furthermore, as the larger under-thirty age group assumes a greater participatory role in social activities, members of that age group will be increasingly exposed to conditions which could potentially enhance opportunities for the commission of violations of the law. Increased social activity in an overcriminalized society is likely to engender (at least statistically) more deviations from established norms. This fact alone will account for a growth in the rate of delinquency proportionately higher than the increase in population. The same will also be true of adult statistics.

Meanwhile, detentional and correctional facilities, whether for adults or juveniles, have not significantly increased in number, capacity, and efficiency to handle an increased number of persons. The prison population has been gradually decreasing in the last decade, even though by 1969, prison authorities in the United States handled an average 1.3 million persons per day with 2.5 million admissions annually; juvenile authorities held only a maximum of 54,000 children in public institutions, even though over 900,000 delinquency cases were handled by juvenile courts. In 1968, more than 50 percent of juvenile cases involved serious crimes, 10 percent of which were crimes against the person; and in 1974, the estimates are that 80 percent will involve serious crimes, 30 percent of which will be crimes against the person.

12. HEW, Statistical Series No. 95, Juvenile Court Statistics 2 (1968).
Inadequate and insufficient facilities and services have encouraged the development of a non-confinement policy for juvenile offenders whenever possible. In many states, however, this is merely a disguise for a “revolving door” confinement policy. As more youthful offenders are adjudicated “delinquents” and ordered confined, those confined for less serious violations are released to make room for the newcomers. While there is no doubt that alternatives to confinement can be more effective, they depend on community-based services and resources which are largely unavailable. A shortage of judges and supporting personnel has led to an increased reliance on non-judicial administrative personnel, resulting in the formation of a subsystem. Concurrent with these developments, the sixties witnessed the application to juvenile delinquency proceedings of almost all constitutional due process guarantees available in adult criminal courts. Juvenile courts have retained only the name; in fact, they are “junior criminal courts.”

These developments have led many jurists to assume a retributive outlook toward the treatment of youthful offenders. The “lock them up and throw the key away” syndrome parallels the belief that the relaxation of parental and governmental controls has allowed a pervasive “permissiveness” to which is attributed increased delinquent and criminal behavior. Similar to the early distinctions between youthful and adult offenders, the present trend is not predicated on any scientific foundation.

Penal legislation, which should embody the social values of a given

13. In 1967, Illinois handled 65,570 juvenile cases, of which 21,408 were in Cook County. The figures have risen in 1969 to over 25,000. Of these, almost half were adjudged delinquent but the Illinois Youth Commission had, up to 1969, space to accommodate no more than 1,500 at any one time. On a national scale, “131,000 children were admitted to public institutions for delinquent children during the year 1968, and nearly the same number were discharged.” HEW, STATISTICAL SERIES NO. 96, STATISTICS ON PUBLIC INSTITUTIONS FOR DELINQUENT CHILDREN 1 (1968).


16. See Bassiouni, The Challenge of Delinquency in a Free Society: Juvenile Philosophy and Gault Revisited, 6 ILL. CONT. LEGAL ED. 97, 135-38 (Oct. 1968) wherein a survey of the judges present at the Illinois Judicial Conference of 1968 revealed that 80% wished to have the authority to establish minimal detention stays for delinquents remanded to the custody of the youth authorities.
time, is all too often outdistanced by changing values because its structures are more oriented toward conservation than transformation. Thus, the failure to understand what actuates a person's conduct prevents the legislator, jurist, and administrator from developing tools necessary to the proclaimed rehabilitative objective. Penal legislative policy remains chained to the same notions which existed at its origin: that criminal responsibility is predicated on the assumption that every individual possesses free will; that the free will of the actor is not affected by determinism (or predetermination); and that a person can (save for certain legal defenses) control and conform his or her conduct to the requirements of the law. As an alternative to the traditional approach is Lady Barbara Wooton's notion that "responsibility" should be altogether bypassed and allowed to "wither away." The various modern scientific approaches to criminality, albeit much closer to the Wooton approach than to the classical penal law, have yet to find their way into the administration of criminal justice in the United States or, for that matter, in most other countries of the world.

The law's prevailing perception of humans is that they are rational and prudent, capable of exercising free will and, therefore, responsible for their conduct. However, to the extent that divergent philosophical viewpoints can be supported by scientific or didactic evidence, they must inevitably influence legal thought.

The law's view of man is anchored in a long history of Western Christian philosophies which have, more often than not, perceived man as the product of a special creation and a special destiny. Man may be viewed as somehow naturally tainted (as, for example, by "Original Sin"), but such natural corruptions might be supernaturally overcome. Redemption—a rehabilitative notion—is recurrent in Western philosophy and theology.

The conflict between such divergent views became significant at

about the time of the Renaissance when anatomical studies, long for-
bidden, shed new light on principles of bodily action and some of
these principles gave rise to counterparts in the realm of human be-
behavior. The empiricism of rapidly developing physical and biolog-
ical sciences became increasingly divorced from the speculation
of philosophers and theologians, and, at the risk of oversimplification,
a dichotomy was posed: biology vs. philosophy.

The problem discussed here has come to be known as the "na-
ture-nurture" problem. The problem is concerned with the
question of whether man's behavior is more profoundly influenced
by "nature" (that is, biological factors) or by "nurture" (that is,
by events subsequent to birth). A more modern terminology for
this problem is "the heredity-environment problem."22

Three reasonably distinct positions with respect to the "nature-
nurture" problem exist: (1) a fully deterministic position, holding
that man and his behavior are totally determined by biological
forces; (2) a fully non-deterministic position, holding that man
and his behavior essentially transcend laws of nature which apply
to other forms of life, and (3) an intermediate position, holding
that man is the product of a dynamic interaction between heredity
and environment. Few laypersons or scientists would acknowledge
adherence to either of the first two positions; but when pressed most
would acknowledge a preference for the interactive model of beha-

II. CONSTITUTIONAL THEORIES—THE BIOLOGICAL APPROACH

This section sets out a number of theories closely allied to the de-
terministic position. Three varieties of constitutional theories are
considered here: constitutional theories per se, neurological theories,
and genetic theories. These theories do not necessarily deny an en-
vironmental role in criminality and delinquency, but their major focus

21. A good discussion of the "nature-nurture" (or "mind-body" or "heredity-en-
vironment") problem in the behavioral sciences, both historically and contemporar-
ily, is provided by J. Deese, PSYCHOLOGY AS SCIENCE AND ART chs. 1, 5 (1972).

22. The medieval philosopher St. Thomas Aquinas was particularly concerned
with the "mind-body" problem in the context of the relation between "matter" and
"form." A substantial portion of his Summa Theologica (c. 1274) focuses, at least
by implication, upon this problem. For survey of the Thomistic view, see H. Caf-
RNS, LEGAL PHILOSOPHY FROM PLATO TO HEGEL (1949).
is upon non-environmental sources. They are positioned on the nature side of the "nature-nurture" question.

A. Strict Constitutional Theories

In 1876, the great Italian criminologist Cesare Lombroso published L'uomo Delinquente (The Criminal Man). In that work, Lombroso attempted to establish a classification of "criminal types" based upon the offender's physical characteristics; facial, cephalic, and bodily anomalies which suggested to Lombroso that criminals were atavistic specimens of mankind. For example, Lombroso's descriptions include:

In general many criminals have outstanding ears, abundant hair, a sparse beard, enormous frontal sinuses and jaws, a square and protruding chin, broad cheek-bones, frequent gestures, in fact a type resembling the Mongolian and sometimes the Negro.23

Although Lombroso believed that more than half of the criminals of his day were "criminaloids" or insane, the real problem, as he perceived it, was that of combatting the "born criminal." His theory proposed the existence of a group of criminals who were incapable of altering the predetermined antisocial behavior patterns. There was scant data to back his hypothesis.

Varieties of constitutional theories have been periodically proposed since Lombroso's day.24 Phrenologists have claimed that conformations of the skull reveal character traits and behavioral predispositions.25 Endocrinologists have claimed that criminality may be due to glandular malfunctioning and subsequent imbalances.26 The physical anthropologist Ernest A. Hooton, after administering anthropometric measures to many thousands of prisoners, concluded as recently as 1939, that the primary cause of crime is biological inferiority.27


Noteworthy among the work of more recent constitutionalists is that of Sheldon and Eleanor Glueck, who have investigated the relationship between body type and delinquency. Detailed comparisons were made of 500 male "persistent delinquents" and 500 male "proven non-delinquents" matched for age, intelligence, ethnic, and racial derivation and residence in similar socio-cultural environment. A major finding of the Gluecks' study was a preponderance of mesomorphic (muscular, well-knit) body types among the delinquents, associated with such behavioral or personality characteristics as aggressiveness and impulsiveness. Following up their original study some years later, the Gluecks found that less than 30 percent of the "persistent delinquents" maintained patterns of serious antisocial behavior into the third decade of their lives. Such findings have led the authors to conclude that:

the fact that twice as many delinquents as nondelinquents were originally found to be of the closely knit, muscular, energetic mesomorphic physique does not mean that mesomorphy per se is inevitably related to delinquency . . . .

Such information is of value both in identifying potential delinquents at a very early age, when therapeutic-preventive intervention is likely to be most promising, and in focusing on the frequently occurring combinations of influences so that intervention can be pointed and realistic.

Thus, the strong constitutional approach implied by the Gluecks in Physique and Delinquency seems to have been considerably modified by their subsequent findings. This apparent moderation of a strict constitutional approach to delinquency has evidently not been sufficiently appreciated by other writers. Julian Roebuck, for example, summarizing the Gluecks' work, notes:

[What is more important from a typological frame of reference, they report different characteristic patterns of response for each of four body types. Certain socio-cultural stresses operate to modify or enhance the characteristic behavior patterns of each type.]

Advancing a concept of "delayed maturation," the Gluecks sug-

28. A detailed account of selection of the study populations is given in S. GLUECK & E. GLUECK, UNRAVELING JUVENILE DELINQUENCY (1950). A synopsis is provided in S. GLUECK & E. GLUECK, PHYSIQUE AND DELINQUENCY 2-3 (1956). It is in the latter work that the constitutional concepts of the authors are made most explicit.


30. Id. at 172.

gest that any delinquent population contains two disparate varieties of individuals: those whose delinquency can be attributed to adverse environmental influences, and those whose behavior is "... more nearly related to innate (though partly, also, to early-conditioned) abnormalities that set limits to the capacity to achieve a socially adequate degree of maturity and adaptability." The former will eventually achieve the social maturity to abandon delinquency, most commonly between the ages of twenty-five and thirty-one years; the latter will not.

This dichotomous classification apparently parallels other typological systems which differentiate "real" (that is, habitual and hereditary) criminal and "situational" criminals. In this respect, the Gluecks' constitutional approach resembles the genetic approaches to be discussed later, although the Gluecks specifically disavow the "... somnolent Lombrosian theory that 'the criminal' is a distinct hereditary species of 'atavistic' or of degenerative nature."

One particular advantage of the Gluecks' research approach and the data thereby generated is that it permits at least some tenuous quantification. It is not unreasonable to infer from their data that approximately 30 percent of individuals classifiable as "persistent delinquents" will demonstrate, as adults, antisocial behavior which is at least largely constitutionally influenced. The remaining 70 percent presumably do not have such biological constraints.

B. Neurological Theories

While the constitutional approach to delinquency and crime might well have long been described as theory in search of fact, the neurological approach may more aptly be described as fact in search of theory. As yet no comprehensive neurological theory of delinquency and criminality has been advanced. For many

33. Such a dichotomy is rendered, for example, by Franz Exner and by Erwin Frey. See F. EXNER, KRIMINOLOGIA 115-20 (1949); E. FREY, DER FRÜKRIMINELLE RUCKFALLSVERBRECHER 59-348 (1951).
34. S. GLUECK & E. GLUECK, PHYSIQUE AND DELINQUENCY 2 (1956).
years, however, observational relations between criminal behavior and various kinds of brain abnormalities have been reported.

Geiger, for example, examined more than 600 juvenile delinquents with severe behavior problems and found that approximately 75 percent of these children demonstrated abnormal EEG (electroencephalograph) patterns: patterns of electrical activity within the brain as recorded through scalp electrodes. Thompson also found a significantly higher frequency of neurological abnormalities in severe delinquents than in non-delinquents. In an older study, however, Jenkins and Pacella, studying delinquent boys, found no significant correlation between EEG abnormalities and criminal behavior; they did find significant correlations between EEG abnormalities and the presence of organic brain disease or epilepsy.

Many others could be cited, but these three are sufficient to frame the difficulty with such studies. At most, they can demonstrate the existence of some phenomenological relation between brain structure as well as brain activity and various types of behavior. They cannot demonstrate a causal relation between brain abnormality and delinquency or criminality. Furthermore, while as many as 75 percent (or as few as 40 percent) of children exhibiting various kinds of behavior disorders also demonstrate EEG abnormalities, at least a substantial proportion of these abnormalities disappear with age or are susceptible to treatment with pharmacological agents. As Anthony notes, the most common EEG abnormality encountered in these children is a pattern which would be considered normal at a much younger age, leading to a concept of "brain immaturity" or "developmental lag."

EEG abnormalities also occur in the "secondary behavior disorders" of children—those which can be linked to some antecedent physical event such as prenatal injury or disease, birth injury, or...
postnatal injury or childhood disease. Such EEG abnormalities can be demonstrated in about half the cases of secondary behavior disorders. A given antisocial act may be produced by the victim of either primary or secondary behavior disorder, but lifelong and characteristic patterns of behavior for the two types differ considerably; the prognosis for the latter is considerably poorer inasmuch as a genuine and permanent neurological impairment is more likely to exist. The victim of secondary behavior disorder, however, is commonly of less-than-normal intellectual level, and any manifested criminality is likely to be of a comparable level.

Present knowledge of brain function and its direct consequences for behavior is simply inadequate to formulate any conceptually—or statistically—satisfying theory of delinquency and criminality. Provocative observations are plentiful, but their meaningfulness has yet to be determined.

C. Genetic Theories

While constitutional and neurological approaches to delinquency do not directly reach the center of the heredity-environment problem, genetic theories cannot sidestep the issue. Lombroso placed himself clearly on the side of heredity, and to some extent his view retains some popularity in the European literature. With the rise of sociological, psychological, and psychiatric theories, particularly in the United States, Lombrosian concepts have remained, in the Gluecks’ happy term, “somnolent,” and only very recently has the question of a directly heritable criminality been resurrected.

Chromosomal anomalies are considered a “genetic theory,” but only in the specific sense of “heritable,” as employed below. Their

41. Id. at 733-34.
42. For a recent overview of biological criminology see D. Gibbons, Society, Crime and Criminal Careers (1968).
43. See note 23 supra.
44. See works cited in note 24 supra.
45. See Glueck & Glueck, supra note 34.
46. See discussions of Chromosomal Anomalies and Genetic Criminality, pp. 1358-65 infra.
47. In this discussion, “heritable” will be used to refer to any characteristic directly traceable to the individual's genetic make-up and, therefore, presumably acquired from the parents and/or transmissible to offspring.
specific inheritance from parents is disputable, and transmissability to offspring can only be putative. Another approach, genetic criminality, is clearly and directly genetic in the scientific sense of the term, but its causal relationship to behavioral control is not yet sufficiently documented to merit the status of “theory.”

1. Chromosomal Anomalies

Recently, Price and Whatmore published a description of a new type of “born criminal”: the individual whose supernumery Y chromosome has allegedly predisposed that person to antisocial behavior.

The picture of the XYY males is of highly irresponsible and immature individuals whose waywardness causes concern at a very young age. It is generally evident that their family background is not responsible for their behavior. They soon come into conflict with the law, their criminal activities being aimed mostly at property, although they are capable of violence against the person if frustrated or antagonized. Their failure to respond to corrective measures leads to a sentence of prolonged detention . . . at an earlier age than is usual for offenses of this kind.48

Since the XYY syndrome is a recent and significant reappearance of Lombrosian notions, it must be described in some detail.

Chromosomes, structures present in the nucleus of every living cell of the body, consist of DNA (deoxyribonucleic acid), the substance in which genetic information is coded and passed from one generation to the next. Normally, there are twenty-three pairs of chromosomes in each cell, one unpaired set of twenty-three having been received from the father, and the other set from the mother. Twenty-two of these pairs constitute the individual’s complement of “autosomes.” The remaining pair, which determine biological sex and certain other characteristics, are known as the “sex chromosomes.” In the female the sex chromosomes are two of similar size and shape known as X chromosomes. In the male only one of the sex chromosomes is an X; the other is known as the Y chromosome, smaller and easily distinguished from the X chromosome. A female child receives an X chromosome from her mother and another from her father, while a male child receives an X chromosome from his mother and the Y chromosome from his father.

In the maturation process for both egg and sperm (normal meiosis) two cell divisions are involved, one a mitotic or duplication division, the other a meiotic or reduction division. Four cells are thus produced from one original cell, in each of which the chromosomal number has been reduced to half. The failure of chromosomal pairs to divide equally in daughter cells, non-disjunction, results in an extra or doubled chromosome going to one daughter cell with consequent loss of that chromosome to the other daughter cell. While normal disjunction produces eggs (each of which has a single X chromosome) and sperm (each of which has either an X or a Y), non-disjunction results in eggs with either two or no X's and sperm with XX, YY, XY, or no sex chromosome. Union of abnormal with normal sex cells yields the following possibilities, some of which are associated with previously known syndromes:

- **XO**—"Turner's syndrome": females with defective development of the reproductive system, short stature, broad chest, and other physical anomalies.
- **XXX**—Females, normal physically, but generally believed to have moderately depressed intelligence (Super Female).
- **YO**—This condition is presumed to be lethal and has never been reported in the scientific literature.
- **XXY**—"Klinefelter's syndrome": males with late onset of puberty, underdeveloped testes, possible breast development, increased frequency of mental retardation, and also believed to be more vulnerable to social and psychological problems.
- **XYY**—Males who are taller than average and who, according to recent studies, may be prone to anti-social or other behavioral problems (Super Male). 49

There is another mechanism whereby some of the above abnormalities—for example, XYY—can be formed. 50 This occurs after the egg has been fertilized and results from non-disjunction in one of the early mitotic divisions of the fertilized egg. Sex chromosome anomalies, however, occur most frequently as products of meiotic non-disjunction: that is, in the production of a parent's eggs or sperm.

---


It should be understood that the anomaly resulting from non-disjunctive meiosis occurs at conception and is perpetuated at all subsequent stages of development; every cell of the child's body will evidence the anomaly. Non-disjunctive mitosis, however, occurs at some (usually early) post-conception developmental stage; the resulting mosaicism will be reflected by different chromosome complements in cells of various body tissues.

No correlation between abnormal chromosome complements and antisocial behavior had ever been empirically established until 1965 when Jacobs and her colleagues at Edinburgh published their now classic study. They surveyed inmates of the maximum security Scottish State Hospital and found that eight of 197 inmates had an extra Y chromosome complement (7XYY, 1 XXYY). This 3.5 percent incidence of XYY males contrasts with random samplings of the population which have established a frequency of XYY males ranging from 0.5 to 3.5 per 1,000 males. Although a later survey by Price and Whatmore of a larger sample from a maximum security hospital reveals a slightly reduced incidence of 2.85 percent (9 XYY males out of 325 inmates), but this is still a frequency at least eight times greater than that found in the general population.

The authors observed three ways in which nine XYY males at the State Hospital, Lanarkshire, Scotland, differed from eighteen of their fellow inmates comprising a control group:

First, although the patients in the two groups have penal records of comparable lengths, those of the XYY males include considerably fewer crimes of violence against persons. Thus the nine XYY males had been convicted on a total of ninety-two occasions, but only eight of these convictions (8.7 percent) had been for crimes against the person. The eighteen control males had been convicted on 210 occasions, and forty-six percent had been for crimes against the person, while 132 (62.9 percent) had been for crimes against property. Second, the disturbed behavior of the XYY patients showed itself at an earlier age. This is reflected in a mean age at first conviction of 13.1 yr. compared with a mean age of 18 yr. for the control group . . . . Third, in the families of these patients the incidence of crime among the siblings of the XYY patients is significantly less than among those of

52. Id. See also Wiener, Sutherland, Bartholomew & Hudson, XYY Males in a Melbourne Prison, 1 Lancet 150 (1968); Montagu, Chromosomes and Crime, Psychology Today, Oct., 1968, at 42-44.
the control patients: Thus, only one conviction is recorded among thirty-one siblings of the XYY patients while no less than 139 convictions are recorded for twelve of sixty-three siblings of the control patients

It is generally evident that the family background is not responsible for their behavior.54

These findings are persistent and uniform among mentally retarded, but their significance has often been rejected for lack of studies of the general population in prisons and hospitals.55 Incidents have typically been regarded "... as yet another form of sex chromosome aneuploidy which can be associated with mental subnormality."56

Ironically, the only XYY male of superior intelligence (I.Q. 118) as yet reported turned out to be a "confirmed embezzler."57 While such mental retardation usually falls within the "mild" range, allowing the individual to be "guided toward social conformity,"58 the combination of behavior disorder and retardation, in conjunction with the XYY syndrome, may, indeed, lead the individual into a hopeless cycle of prison and hospital confinement.

As the result of an analysis of a large number of published studies on XYY males, Hook concluded that there is a significant relation between the chromosomal anomaly and deviant behavior.59 This conclusion is based upon a much greater incidence of XYY males in institutions than their occurrence in the general population would suggest. The highest incidence seems to occur in "mental-penal" institutions, rather than in "mental" institutions or in "penal" institutions. While the implications of currently available data are far from clear, behavior stemming from "aggressiveness" and "impulsiveness" seems partially to account for the "penal" aspect of institutionalization, while some degree of intellectual deficiency may account for the "mental" aspect of institutionalization.

54. Id.
57. Leff & Scott, XYY and Intelligence, 1 LANCET 645 (1968).
58. Mild retardates "may learn academic skills up to approximately sixth grade level by late teens" and "can be guided toward social conformity." Their I.Q. is between 52 and 67. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL FOR MENTAL DISORDERS 14 (2d ed. 1968).
Hook notes the inadequacies of available data and the methodological difficulties of reported studies. It does appear, nevertheless, that the XYY male does present a somewhat greater risk to society than his XY (normal) counterpart. This risk should not be exaggerated, however: the actual incidence of XYY in the general population is very low—in the range of .1 percent to .4 percent. Certainly the vast majority of institutionalized offenders are not XYY; and the vast majority of XYY males do not become institutionalized offenders. Hence the XYY anomaly cannot be considered a major contributor to crime and juvenile delinquency.

There exists dispute within the literature as to the type of offenses characteristic of the XYY male. Ashley Montagu, for example, finding significance in the fact that three out of four XYY males in the Melbourne Prison study had been convicted of murder or attempted murder, argues that the additional Y chromosome predisposes toward violence. Price and Whatmore, however, find it equally significant that 88 percent of the ninety-two convictions of nine XYY males were for crimes against property. Data cited by Hook seem more supportive of the latter position, but additional research is necessary.

The legal implications of chromosomal defect research are far from clear. In the twenty-nine jurisdictions in the United States wherein the M'Naghten insanity test is the accepted standard for absolving from criminal responsibility (as well as in the six jurisdictions where the M'Naghten test is supplemented by the control test, but where the burden of proof with respect to sanity lies with the defense) the XYY anomaly will be of limited significance. In the fourteen jurisdictions in which the ALI control test is used (burden of proof ultimately on the prosecution) and in the one jurisdiction in which the ALI standard is used but the burden of proof is on the accused, the legal effects of the syndrome may be useful, but only if supplemented by additional evidence. Thus, in the fifteen ALI jurisdictions the XYY syndrome does appear to be a factor which may be sufficient to sustain an insanity defense. Nevertheless, no case has yet been

decided on that basis. Thus in all jurisdictions the XYY syndrome will at best be only one factor, ranging from negligible to moderate in significance, in establishing an insanity defense.63

2. Genetic Criminality

No gene for “criminality” or “delinquency” has as yet been demonstrated. While it is not beyond the realm of possibility that such a gene may one day be discovered, the probability seems slight, for to view criminality as so unitary a characteristic is too simplistic. Experience in the problem of the hereditary contribution to schizophrenia may serve as a useful guide in the present discussion. Schizophrenia, the most common of the major mental illnesses, has long been suspected of containing a strong hereditary component; theories and research in this area date back many years. The question is still fervently debated despite the existence of a substantial volume of suggestive data.64

Clearly, varieties of criminality and delinquency exist, and perhaps some of these varieties may be genetically controlled. To date, no classification scheme for criminality has been proposed which might lend itself readily to genetic investigation. Certainly one of the components of serious criminality or delinquency is the presence of aggression or violence. A substantial amount of literature demonstrates that aggressiveness may be at least partially hereditarily determined. More than thirty years ago, Scott demonstrated genetic control of at least some forms of “violence” in mice,65 and more than sixty years ago Yerkes demonstrated the hereditability of aggressiveness in rats through selective breeding.66


64. For a review of the problem and the associated literature see Gottesman & Shields, Schizophrenia in Twins, 27 DISEASES OF THE NERVOUS SYSTEM 11 (1966). A compromise view of schizophrenia seems now to be attaining a consensus: that multiple varieties of schizophrenia exist, some of which may be largely genetically determined, while others are primarily environmentally determined.


Moyer, noting the importance of distinguishing types of aggression, has behaviorally or situationally differentiated at least six such types in various animal species: predatory aggression, inter-male aggression, fear-induced aggression, irritable aggression, territorial defense, and maternal aggression. Scott, however, has provided a simpler classification: predation and social fighting in animals. From his discussion emerges a suggestion that at least three varieties of human criminality or delinquency must be considered: predation, social aggression by the individual, and aggression by a group.

Concerning the manner in which heredity may express itself, Moyer has postulated a neurological model which implicates a number of brain structures in aggressive and hostile behaviors and has suggested that differences in such structures may be genetically determined. Applying genetic expressions in mental retardation as a model, the hereditary mechanism in criminality and delinquency might also be a hormonal or metabolic dysfunction.

Data with respect to the possibility of genetically determined aggressiveness or hostility in humans is scanty. Data specifically

70. Id. at 64.
71. Genetically determined mental retardation may operate through any of a number of known mechanisms, including deformation of the brain and/or skull, as in microcephaly; hormonal dysfunction, as in cretinism; metabolic dysfunction, as in galactosemia; or chromosomal anomalies, as in Down's syndrome (mongolism). These and other examples are discussed in Robinson & Robinson, MENTAL RETARDATION, in 2 CARMICHAEL'S MANUAL OF CHILD PSYCHOLOGY 615 (3d ed. P. Mussen 1970). Biological defects are not the only source of existing organic conditions which affect a person's behavioural control. At issue is the question of controllability and it may be effected in a variety of other ways. One of these is the relationship between metabolism, the nervous system and behavioural control. In a letter to the author, Dr. S. Gaballah, Adjunct Professor of Bio-chemistry at Northwestern University Medical School stated:

While behaviour is basically the response of an organism to stimulation of an external or internal origin both will reflect central nervous system response. Research interests in this area during the past decade was stimulated by the finding that many of the drugs used for treatment of patients with affective (neuromotor) disorders also caused significant changes in the metabolism of various neurohormones which are considered as modulators
relevant to the possibility of genetically determined criminality or delinquency is even rarer. Concepts of hereditary criminality have occasionally been suggested by Europeans, but very rarely in the United States, quite probably because of differences in fundamental assumptions about man as previously discussed. An unsophisticated "criminality gene" notion has never achieved popularity in the United States, but the implications of some studies on humans have been coupled with data from great numbers of studies on animals to provide at least the preliminary outlines of a still-developing theory of the role of genetics in deviance leading to delinquency and criminality.

III. ENVIRONMENTAL THEORIES—THE SOCIOLOGICAL APPROACH

In sharp contradistinction to the positions taken by those advocating biological or quasi-biological theories of deviance, are the positions taken by those espousing environmental theories. Ex-
tremist positions virtually deny significance to the biological factors, while more moderate positions acknowledge some biological contribution but argue for a preponderance of environmental influences. Biological theorists emphasize prenatal influences; sociological theorists emphasize postnatal influences.

It should be evident that from the constitutionalist viewpoint, delinquency is at least largely unlearned behavior, while from the environmentalist viewpoint, delinquency is essentially learned behavior. The locus and manner of learning differentiate two varieties of environmental theories: the strict sociological theories, and the psychological and social-psychological theories.

**A. Strict Sociological Theories**

The strict sociological approach to deviance arises from the premise that all behavior is learned within the boundaries of a given culture and society, or subculture and subsociety. Two main schools of thought have emerged which rely on this approach to explain deviant behavior. One group of authors argues that the main question to be asked is “Why do people not obey the rules of society?,” and their answers proceed from a theory of “cultural learning” of deviant behavior and norms or of social structural pressures toward deviance. Another group of social scientists insists that the relevant question is “Why do people obey the rules of society?,” and their answers take the form of theories of social control, with the implication that deviance is to be explained by a weakening of such control.

**1. Social Structure Theory**

Social structuralists link delinquency to differences in community standards and behavior. The main thrust of this position can be traced to the findings of an early study, *Delinquency Areas*.73 This monograph reported a study of the home address distribution of approximately 60,000 males in Chicago who had been dealt with by school authorities, the police, and the courts as actual or alleged truants, delinquents, or criminals. The rates of all three types

of behavior varied widely among the local communities in the city. The low-income communities near the center of commerce and heavy industry had the highest percentages while those in outlying residential communities of higher economic status were uniformly low.

The social structuralist position also holds that inasmuch as delinquent and criminal behavior is learned (as is, of course, non-delinquent and non-criminal behavior), patterns of behavior will largely depend upon the opportunities for learning available to the participant. In other words, when individuals become criminal, they do so because of contacts with criminal patterns and because of isolation from anti-criminal patterns.74

The determining factor in the learning process is the relative availability of a particular type of opportunity and/or the selective perception of this opportunity by the participant. The possibilities for learning acceptable and unacceptable behaviors can be further subdivided into positive and negative—presence and absence of learning opportunities. Four basic learning opportunity patterns thereby can be conceived:

1. Opportunities to learn acceptable behavior coupled with opportunities to learn unacceptable behavior produce culture conflict.

2. Opportunities to learn acceptable behavior in the absence of opportunities to learn unacceptable behavior produce conventional culture.

3. Absence of opportunities to learn acceptable behavior but the presence of opportunities to learn unacceptable behavior produces delinquent culture.

4. Absence of opportunities to learn acceptable behavior and the simultaneous absence of opportunities to learn unacceptable behavior leads to a lack of culture.

Conventional culture is most likely to be found in stable, homogeneous, middle-class living conditions. Unconventional delinquent and criminal culture would be more typically found in the urban ghetto, the deteriorating city center, and similar lower-class areas. Different types of lower-class neighborhoods can be distinguished.75 The first type, worthy of notice but of little conse-

74. E. Sutherland & D. Cressey, Principles of Criminology 81 (7th ed. 1966).
quence, is the rooming house district whose salient feature is the extreme anonymity which it grants its residents. Delinquency here is typically less of a problem than mental illness, alcoholism, and suicide. More important as a "breeding place" for juvenile delinquency, is the family slum, the decaying tenement district. A third type of neighborhood combines the salient features including the inadequacies of both the rooming house district and the family slum. This is the neighborhood comprised of public housing projects for low income families.

In environments such as these, patterns of behavior are developed which will very often not be in accordance with prevailing societal or legal norms. These behavior patterns are reinforced by family patterns prevalent in the poverty cycle. Such families are characterized by "premature school-leaving, inadequate jobs, and early family responsibilities." The types of families found most often under such circumstances include the one-parent family, the family with a large number of children, and the non-white family. Parents, as institutional controls, disappear from the scene almost completely, and adolescents strike out on their own.

The foremost socializing agent that the youth perceives is the peer group. The gang performs functions for its members which would be performed by conventional institutions in other areas. Just as conventional culture is transmitted from generation to generation, so is delinquent and criminal culture. Acceptance by the peers is of paramount importance to the adolescent. Through participation in the group the youth seeks status and tests adult roles. In order to gain acceptance, the youth must conform to the standards of the group. When the group (qua gang) represents the core of an attack on conventional societal values, the youth will be given opportunities for learning behavior appropriate to these ends. Some authors have argued that lower-class culture is a "generating milieu of gang delinquency," since the values or "focal concerns" traditional in United States lower classes (toughness, smartness, excitement, aggressiveness, etc.) lead to behavior unacceptable to society at large.

77. Miller, Lower Class Culture as a Generating Milieu of Gang Delinquency, in DELINQUENCY, CRIME AND SOCIAL PROCESS 332 (D. Cressey & D. Ward eds.)
The explanation of delinquent behavior in terms of lower-class culture isolated from middle-class norms and values would appear applicable only to the most extreme ghetto situations. The effectiveness of mass-media indoctrination in modern society presents most working-class youth with ample opportunities to come into contact with conventional middle-class norms and behavior. Cultural ambivalence or culture conflict is therefore the most likely outcome.78

Juvenile delinquency is, however, not restricted to the most extreme ghetto situations. A different type of theory is necessary to explain the amount of delinquency in situations of culture conflict. According to such a theory, mere opportunity to learn acceptable behavior is not enough if society is structured in a fashion that handicaps certain segments of the population in their reach for "success." Clearly, another type of opportunity is relevant here: the opportunity to achieve social status, be it a middle-class lifestyle or an improved economic position. This opportunity has led to the following typology.79

<table>
<thead>
<tr>
<th>Categories of Lower-Class Youth</th>
<th>Orientation of Lower-Class Youth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Toward Membership</td>
</tr>
<tr>
<td></td>
<td>in Middle Class</td>
</tr>
<tr>
<td>Type I</td>
<td>+</td>
</tr>
<tr>
<td>Type II</td>
<td>+</td>
</tr>
<tr>
<td>Type III</td>
<td>-</td>
</tr>
<tr>
<td>Type IV</td>
<td>-</td>
</tr>
</tbody>
</table>

Types I and II are composed of the "college boys," type IV of the "corner boys" as portrayed in William F. Whyte's classic study of working class gangs.80 While "corner boys" do not strive for middle-class status, college-oriented boys may find their striving thwarted by the fact that they have been raised in working class homes because

1969). Miller states at 346:

[T]he commission of crimes by members of adolescent street corner groups is motivated primarily by the attempt to achieve ends, states, or conditions which are valued, and to avoid those that are disvalued within their most meaningful cultural milieu, through those culturally available avenues which appear as the most feasible means of attaining those ends.

Socialization in working-class homes is less likely to produce young people with the ability to do well in terms of these (middle-class) criteria (of status) than is middle-class socialization. Many working-class children thus appear rough, uncouth, ill-bred, undisciplined, and lacking in ambition, ability, and drive. In school they are ill-equipped, lacking the background and the habits that would help them to master academic subjects and to perform acceptably in other ways.\footnote{Cohen \& Short, \textit{Juvenile Delinquency}, in \textit{Gang Delinquency and Delinquent Subcultures} 15 (J. Short ed. 1968).}

Frustrated, such children may turn to the "delinquent solution." The delinquent subculture deals with these problems of status by providing criteria which these children can meet.\footnote{Cohen, \textit{supra} note 78, at 121.}

But, in all likelihood the seriously delinquent lower-class youth belongs to type III of the above mentioned typology:

The literature on lower-class delinquent subcultures is replete with references to the conspicuous consumption of wealth: delinquents repeatedly remark that they want "big cars," "flashy clothes," and "swell dames." These symbols of success, framed primarily in economic terms rather than in terms of middle-class life-styles, suggest to us that the participants in delinquent subcultures are seeking higher status within their own cultural milieu. If legitimate paths to higher status become restricted, then the delinquent subculture provides alternative (albeit illegal) avenues.\footnote{Cloward \& Ohlin, \textit{supra} note 79, at 96.}

In addition, some authorities have concluded that different types of lower-class neighborhoods may lead to important differences with respect to the type or style of delinquency.\footnote{See, e.g., I. Spergel, \textit{Racketville, Slumtown, Haulburg} (1964).}

2. \textit{Social Control Theories}

Social structure theories seem necessarily to lead to the conclusion that delinquency is almost exclusively a lower-class phenomenon. There is, however, growing evidence that this conclusion is contrary to fact. Official statistics show that most cases referred to juvenile courts originate in working-class and middle-class backgrounds.\footnote{D. Gibbons, \textit{Society, Crime and Criminal Careers} 56 (1968). \textit{See also} the discussion of other sociological approaches to middle-class delinquency. \textit{Id.} at 153.} The validity of such statistics as indicators of class-based delinquency has been seriously challenged. Studies of police practice have shown that middle-class juveniles are informally
warned and released more often than their lower-class peers. The suspicion persists that official statistics may more correctly reflect differential detection and enforcement practices; a suspicion bolstered by studies of "hidden delinquency." Statistics on shoplifting, theft, and narcotics violations reveal a higher concentration in middle-class youths.

The conclusion is that for most working-class youth as well as for most middle-class youth, delinquency is an equally likely condition. Such an incidence of middle-class delinquency, however, cannot be readily explained by the structural theories discussed above, i.e., frustrated striving for middle-class status or economic position and lack of opportunity to learn conventionally acceptable behavior. Furthermore, the factors of heterogeneity and high degree of fluidity are not present in middle and upper-class neighborhoods.

When middle class delinquency does occur, it is largely due to the actor's perception of positive opportunities to learn unacceptable behavior, and the fact that he selects deviation from all the possibilities available to him. One of the most plausible ways to account for this phenomenon is to point to the fact that a youth culture has grown up in the United States (and increasingly also elsewhere) which draws middle-class adolescents into deviant conduct, much of it delinquent in form. The emergence of the youth culture did not come about by happenstance. It is a result of the ambiguities of the adolescent role because, as one author puts it: "We appear to want teenagers to act like young adults in our society, yet we are increasingly stretching the whole socialization process from childhood to adulthood . . . ." This extended socialization is accompanied by the problem of poor adult models. The rapid social and technological changes occurring in modern society make it more difficult for the adult to perform the traditional role of model and mentor to youth. Peer group relations, therefore, may acquire paramount importance since they exercise an inexorable influence upon the teenager and are a

86. See, e.g., R. Carter, Middle-Class Delinquency (1968); A. Cicourel, The Social Organization of Juvenile Justice (1968).
87. Gibbons, supra note 85, at 153, 156.
substitute for ambiguity in family relationships, particularly since there is emerging a "general system of rules and values congruent with the increasingly permissive forms of adolescent conduct." This "permissive" attitude toward adolescent behavior has created special conditions conducive to the development of a new set of normative values. As this culture expands across class lines, attitudes and values tend to become more inclusive. The new youth culture delineates acceptable and unacceptable behavior and the limits of toleration for what it deems unacceptable. This delineation helps explain delinquency among youth from upper and middle-classes.

In the course of legitimate, everyday activities and relationships within the middle-class youth culture, "veiled competition" for status leads to varying efforts toward innovation. Such innovation covers a wide range of exploratory acts and is likely to be tentative, uncertain, and ambiguous. Because there is "mutual exploration and joint elaboration" of behavior among adolescents, such small, almost unobtrusive acts gradually lead to unanticipated elaboration beyond the limits of legitimacy and into the realm of delinquency and criminality. But since each succeeding exploratory act is so small an increment to the previously acceptable pattern, at no stage in the process need the behavior be perceived as "delinquent." Once the patterns develop and are socially rewarded they generate their own morality, norms, standards, and rewards. In this way delinquency can be seen as arising out of conventional and "respectable" behavior. In many cases, these conventional standards are temporarily neutralized rather than negated; such is probably true for speeding, driving without a license, and joy-riding. In other cases, however, organized youth cultural revolutionaries openly attempt to change conventional standards of "respectable" behavior (e.g. non-hard drugs, sex, and draft laws).

In the strict sociological approach to delinquency, several factors

90. Id.
91. Scott & Vaz, A Perspective on Middle-Class Delinquency, in MIDDLE-CLASS JUVENILE DELINQUENCY 214 (E. Vaz ed. 1967).
emerge: Delinquent activity is learned behavior; delinquency is "adaptive behavior" and therefore normal in the situation in which it is found. and the emergence of a definite youth culture has established a new definition of rules and conduct for adolescents. "Interpretations of responsibility are cultural constructs and not merely idiosyncratic beliefs." To this extent, as the youth culture becomes more important to the adolescent's particular types of conduct, it also assumes a greater importance for that person.

For the lower-class adolescent, seeking out his peers is a major socializing influence, the pull of the new values is strong. What the community can provide is alternatives to the norms of the peer group. The pull is not as strong, however, for the middle-class youth because the community provides him with positive alternatives to deviant behavior by rewarding participation in activities such as scouting, after-school sports, and work, which conform to adult standards. Even in the many instances, in which middle-class juveniles do engage in delinquent acts, "absorption by the community" is the rule; parents and other citizens in these communities are allowed to assume responsibility (often eagerly) for deviant youth. This phenomenon is most noticeable in those states which have an administrative release procedure, such as "station adjustment," whereby a juvenile officer can release the juvenile accused of an act of "delinquency" to the custody of the parent without further action. Any administrative or judicial determination allowing the juvenile to remain in the community can be interpreted as an assumption of responsibility in whole or in part by the community for the delinquent's conduct or at least an absorption thereof.

There is also another aspect to the problem which has never been covered in the literature. As a general rule the middle-class resides in the suburbs, and the lower-class in the inner-city. This is particularly true of the larger metropolitan areas. Moreover, the juvenile court is likely to be located in the city's center. It is, therefore, accessible to juvenile officers operating in its immediate vicinity, but sometimes miles away from suburbs within the same judicial dis-

---

94. Tossy, supra note 75.
95. Sykes & Matza, supra note 92, at 667.
96. Carter, supra note 86, at 22.
strict. Because of insufficient personnel and the numerous court appearances required of a juvenile officer, suburban offenders are more likely to avoid a court appearance and more likely to be released administratively than their inner-city counterparts. 97


"Norm" and "value" are concepts frequently used in sociological discourse. These concepts are particularly important in the context of delinquency as learned behavior.

Norms in social science are generally understood as rules, standards, or patterns for action. Norms are the standards of reference by which behavior is judged and approved or disapproved. As stated by one author: "A norm in this sense is not a statistical average of actual behavior but rather a cultural (shared) definition of desirable behavior." 98 The members of any social group expect each other to conform to the norms of the group, and conformity can be enforced by positive or negative sanctions.

Values are, in the broadest sense, fundamental norms which are generally shared by members of a society or subsociety. They are believed to integrate, as well as channel, the organized activities of the members by giving rise, in part, to complexes of derivative norms regulating functionally important areas of life.

One of the criticisms leveled against the explanation of delinquency in terms of the learning of deviant norms or values is that both are seen as culturally prescribed patterns of behavior, requiring a high degree of societal integration for those patterns to be operative at the level of action or behavior. As one critic has argued:

It is theoretically conceivable that there are or have been societies in which values learned in childhood, taught as a pattern, and reinforced by structured controls, serve to predict the bulk of the everyday behavior of members and to account for prevailing conformity to norms. However, it is

97. An additional difference between middle-class and lower-class youthful offenders—a difference laden with social implications—stems from differences in racial composition of the suburban and inner-city populations. What may originally have been a problem of legal logistics has commonly degenerated into an example of de facto racial discrimination and selective enforcement.

easier to describe the model than it is to discover societies which make a good fit with the model.\textsuperscript{99}

The same author then goes on to explain that an open-structured society may develop the type of unified, ideal social structures based on value consensus which appear at the base of the works of Durkheim, Parsons, and Merton.\textsuperscript{100}

B. Psychological and Social-Psychological Theories

The strict sociological theories, discussed in the preceding sections, assign so overwhelming an importance to social (environmental) influences that they appear to lose sight of the individual in their concentration upon the group. That is, these theories imply a near-total plasticity of the individual; he can be, and indeed is, shaped by the milieu in which he happens to find himself. A more moderate—and apparently quite different—approach is considered by theorists of the psychological, social-psychological, and psychiatric casts: their primary focus is upon the individual, not the group or society, and upon the specific ways in which social forces modify a pre-existing substrate of individuality. These theorists view the individual as an active participant in continuous interactions with his environment. Such interactions, and their products, can be considered either from the individual’s or from the environment’s perspective; and these different perspectives establish the distinction between “psychological” and “social-psychological” theories of delinquency.

1. Psychological Theory: Delinquency as a Personality Disorder

Psychological theories consider delinquency from the perspective of the individual. The focus of this approach is clearly implied in the dictum of one of its pioneers: “There must be something in the child himself which the environment brings out in the form of delinquency.”\textsuperscript{101} That is, a certain condition within the inner-self of the individual makes him more responsive than others to nega-

\textsuperscript{99} E. Lemert, \textit{Social Pathology} 63 (1951).

\textsuperscript{100} See, \textit{e.g.}, E. Durkheim, \textit{The Division of Labor in Society} (1949); T. Parsons, \textit{The Social System} (1951); R. Merton, \textit{Social Theory and Social Structure} (1957).

\textsuperscript{101} A. Aichhorn, \textit{Wayward Youth} (1935).
tive thrusts generated by his own impulses or by the pressures of his milieu. Hence the psychological approach to delinquency is "... an attempt to explain the problem from within the person, rather than from without and without resort to agents such as moral codes."\textsuperscript{102}

Although many different psychological theories bear upon juvenile delinquency, the present discussion will omit those which seem primarily relevant to major mental disorders (psychoses) such as schizophrenia, especially inasmuch as such cases are not subject to criminal accountability.\textsuperscript{103} Furthermore it seems established that few criminals are "psychotic."\textsuperscript{104}

Among the more specifically relevant psychological theories of delinquency, there are those which view delinquency as a form of self-expression. Undoubtedly, many delinquents suffer from extreme inner conflict. Such conflicts may range from long-standing, deep-seated emotional disturbances to simpler, open conflicts with parents;\textsuperscript{105} the latter, however, may be characterized by long histories of delinquent activities.\textsuperscript{106} In the sense of self-expression theories, delinquency is a response to pressures, either from within or from outside the individual, which create emotional conflicts.\textsuperscript{107} Thus, delinquency could properly be called voluntary activity on the part of the performer, even if it is a pathological response, because it is "one variety of self-expression."\textsuperscript{108} In order to bring about such self-expression, there must be some faulty socialization process which has remained unchecked over a long period of time. Because the delinquent is still a child and the family has been the major agent of his socialization, the usual assumption is that there exists some imbalance in the parent-child relationship.

The parent-child relation may be viewed as a reciprocal understanding wherein the parents agree to provide security for the child,

\textsuperscript{102} Schwitzgebel, \textit{Role of Mental Health Services in Reducing Adolescent Crime}, 50 \textit{Mental Hygiene} 439 (1966).
\textsuperscript{103} Bassiouni, supra note 2, at 91.
\textsuperscript{105} Elkind, \textit{Middle Class Delinquency}, 51 \textit{Mental Hygiene} 80 (1967).
\textsuperscript{106} Id.
\textsuperscript{107} Id. at 83.
\textsuperscript{108} Id.
in the sense of fulfilling physical and emotional needs, and the child, in return, agrees to abide by parental behavioral norms until the parental provision is no longer required.\textsuperscript{109} Delinquency may result from a breach of this relation by the parents, perhaps in the form of parental exploitation of the child: the parents' use of the relative weakness of the child to maintain their own positions of dominance and control or to serve their own neurotic needs. Because the child cannot retaliate directly, he retaliates indirectly by creating problems for those who abuse him. In this sense, delinquency would be considered more anti-familial than directly antisocial.\textsuperscript{110}

This is not, however, the only way the delinquent youth can attack a situation with which he feels he cannot cope. The weaker youth who feels abused but lacks retaliatory resources often withdraws. The youth with more adequate emotional resources attempts resolution of the problems by "acting out" his or her delinquency through vandalism or fighting. In effect this behavior is an effort to destroy the family institution as the youth knows it. Other youths may not perceive either of these alternatives and may not be able to do more than passively submit to pressures. Delinquency can also result from submission because the youth who adopts this mode of behavior places himself in the position of trying to meet parental and societal demands and expectations.

The difficulty of the exploitative view of delinquency is that it may not be seen or recognized by outsiders. Hence, it is difficult to isolate the cause of the delinquent's antisocial behavior in the absence of skilled observation.

According to the psychological approach to delinquency, the child should not be characterized as mentally or emotionally deficient simply because he lacks experience. Children are often acutely aware of problems which confront their families. When children strike out, they are not necessarily reacting to parental restriction or control but may be manifesting a feeling of being used and denied what they consider theirs. Even such a feeling, however, is not enough to generate delinquent conduct. Several factors within the family or

\textsuperscript{109} Id. at 80.
\textsuperscript{110} Id. at 84.
community may contribute to the delinquency of the child. Among such factors which have been suggested are general social disorganization in the community, parental personality weakness or disorder, the impact of events of the child’s early years, the birth order of the child, and inconsistency in the discipline accorded the child. These factors are among those considered most significant in causing or facilitating the psychological breakdown of the child. 111

When all of the conditions necessary for a breakdown are present, delinquency is likely to result. However, similar unacceptable behavior manifested by two or more youths, is not an indication that the behavior arose from the same causes. 112 Delinquency results from such conditions essentially because built into the personality structure are habits and skills, frames of reference and cultural values that make for warmth, unity and a sense of personal worth. When these personality elements are absent or underdeveloped, the individual becomes socially maladjusted. 113

All serious maladjustment in children, according to this view, reflects the child’s feeling of not belonging to a reliable human group. 114 Since children are so dependent on adults, it is understandable that a breakdown in the dependability and reliability of adults, primarily parents and parental figures, would give rise to emotional conflict and social maladjustment. One might conclude that the family constitutes an immediate matrix within which social strains work to produce an intolerable situation for some children. 115

Another theory deals with the individual child’s behavior as is generally thought to be a group phenomenon because one of the ways the emotional needs of youths are fulfilled is by joining a group or gang. For the youth with emotional problems, the gang offers a sense of “comparative adequacy” 116 which makes the youth increasingly dependent upon the gang for support. 117 Psychologically, such dependence on peer groups has

112. Id. at 174.
114. STOTT, supra note 111, at 173.
115. Id. at 179.
117. Id.
other implications for the formation of gangs. Collective behavior functions to unite individuals on a fundamental level and provides a basis for stronger ties.\textsuperscript{118} The psychological requirements for the formation of a group such as a gang are: (1) some form of self-reinforcing inter-stimulation among the constituents; (2) a general condition of unrest in living patterns; (3) restlessness in the members themselves, stemming from needs which cannot be satisfied by existing forms of living patterns; and (4) discomfort and frustration accompanied by alienation or loneliness.\textsuperscript{119}

Delinquency in the gang, then, is a regulated means of releasing inner tension. The social unrest generated by restlessness acquires a reciprocal character and is mutually reinforced by subsequent activities. This reinforcement is more likely to occur when the participants are sensitive to similar feelings in others and have experienced the same disruption in living patterns. All of this causes a generalized feeling of excitement which is usually manifested in the form of "vague apprehensions, alarm, insecurity, eagerness, or aroused pugnacity."\textsuperscript{120} This feeling may produce non-rational behavior which is rapidly disseminated throughout the group. This is of particular import to delinquency-prone youth because such non-rational excitement can spread quickly to non-participants in contact with the group.

From the psychological point of view, delinquency is the result of an inadequate environment which leaves the emotional needs of the youth unfulfilled and abused. Misbehavior is only a response to the conflict and mistrust that arises from frustration of these internal needs. In this sense, the delinquent's response to his problems is more anti-personal and anti-familial, than antisocial.

The concept of delinquency as a mode of expression of internal conflicts has received at least some empirical support. A number of studies employing this conceptual base were conducted during the 1940's and 1950's. Probably the best known of these is the work of Sheldon and Eleanor Glueck, which has been noted in conjunction

\textsuperscript{119} \textit{Id.} at 226.
\textsuperscript{120} \textit{Id.} at 227.
with constitutional theories of delinquency.\textsuperscript{121} In addition to the constitutional differences they found between delinquents and nondelinquents, the Gluecks also found substantial differences in the character and personality structures of the groups they studied. Rorschach test results showed the delinquents to be much more defiant, suspicious, and destructive and much less submissive than nondelinquents.\textsuperscript{122} On the basis of psychiatric explorations, other characteristics highly correlative with delinquency were found: emotional instability, extraversion in action, suggestibility, and stubbornness.\textsuperscript{123} With respect to family characteristics, the Gluecks reported that

the parents of delinquents, like their families before them, were considerably more burdened with serious physical ailments, mental retardation, emotional disturbances, drunkenness, and criminality than were the parents of the nondelinquents.\textsuperscript{124}

Furthermore, approximately 60 percent of the delinquents came from broken homes or from an environment of prolonged absence of a parent.\textsuperscript{125} The parent-child relation was characterized by a "warm attitude" in a substantially lower proportion of the delinquents' homes.\textsuperscript{126}

This last point was also stressed in the report of another study, which concluded that "delinquents receive less strong and open love from their parents—but especially in the case of their fathers.\textsuperscript{127} The contention that broken homes are particularly conducive to delinquency has been challenged by subsequent investigations: "The influence of broken homes has been overstressed, for the extreme tension found in a quarrelsome and neglecting home is even more conducive to criminality. Such homes produce an extremely high number of all types of criminals."\textsuperscript{128} Another important line of research, related to the role of discipline, concluded that "inconsistency in the

\textsuperscript{121} S. Glueck & E. Glueck, Unraveling Juvenile Delinquency (1950).
\textsuperscript{122} \textit{Id.} at 215.
\textsuperscript{123} \textit{Id.} at 245.
\textsuperscript{124} \textit{Id.} at 100-01.
\textsuperscript{125} \textit{Id.} at 122.
\textsuperscript{126} \textit{Id.}
\textsuperscript{127} R. Andry, Delinquency and Parental Pathology 122 (1960).
handling and discipline of the child’s instinctual and emotional needs (over-frustration alternating with over-gratification) is one of the special features in the aetiology of the delinquent career.\textsuperscript{1,2}

In retrospect, it is somewhat difficult to interpret the data of such studies. One major source of difficulty is the unreliability of official distinctions between delinquents and non-delinquents. There are probably many juveniles who have committed delinquent or criminal acts but who have not been discovered or sanctioned. Another difficulty lies in the lack of a clear personality theory that would distinguish between the different traits and factors associated with delinquency and crime. Research in these areas is seldom guided by a well-defined theory.

Varieties of psychoanalytic theories of personality could be pressed into service as theoretical frameworks for interpretation of empirical data. A number of such psychoanalytical variants exist, characterized primarily by the degree which they deviate from the original psychoanalytic theory proposed by Sigmund Freud.\textsuperscript{130} Most agree that personality is a function of the actions and interactions of three hypothesized components: the id, a source and reservoir of instinctual energy, the entire aim of which is self-gratification; the ego, a reality-oriented aspect of the id developed out of the necessity to recognize that self-gratification must often be delayed; and the superego, a kind of conscience which incorporates social and moral codes and strictures. Behavior is commonly viewed as the product of an incessant warfare between id and superego; behavior itself is an ego function. Freud’s view that warfare is essentially sexual in nature is challenged by many of the psychoanalytic variants and replaced by concepts of power struggles and needs for personal achievements, etc. Most theories, however, maintain a notion of id-superego conflict and its attempted resolution by the ego.

Two general explanations of crime and delinquency have developed out of psychoanalytic theories: one views delinquency as

\textsuperscript{129} I. BENNETT, DELINQUENT AND NEUROTIC CHILDREN 213 (1960).

\textsuperscript{130} A review of Freudian, Neo-Freudian, and other psychoanalytic theories is well beyond the scope of this Article. Elements of specific theories are presented by their various originators in hundreds of diverse publications. Analysis and comparison of major theories can be found conveniently in S. MADDI, PERSONALITY THEORIES (1968).
symptomatic behavior (neurosis),\textsuperscript{131} while the other views delinquency as lack of conscience (psychopathy).\textsuperscript{132} After a careful review of a number of empirical studies, one psychoanalytically oriented author recently reached the conclusion that these studies present a picture of the delinquent which is "more in the direction of the 'psychopathic' than the neurotic structure. This impression is confirmed by the socialization conditions revealed, which are likely to hinder the building of object relations, identification, and super-ego development. . . .\textsuperscript{133}

According to psychoanalytic theory, the child has to learn to repress or modify many of his instinctive impulses or drives. The success of this socialization process will depend on the ability of parents—or others, such as educators—to compensate the child for these frustrations, to give ego support, and to permit identification. The following description of the typical delinquent has been offered by one of the major British studies:

We found the delinquent lacks a sense of guilt or shame, or any impulse to make good his misdeeds; he is wilful and has poor control over his impulses, being unable to wait for satisfactions. His emotional characteristics present a picture that is consonant with the psycho-analytic explanation of the delinquent's arrested or distorted conscience formation; i.e. he is unable to tolerate frustration or to defer his immediate satisfaction in favor of more distant goals because his conscience development remains at a level similar to that of the small child. Even where his conscience has developed, it fails to control his behavior in the face of temptation and moral choice. This conscience development is faulty because it fails to arouse guilt or shame, and does not lead the child to adapt his behavior to the demands of reality. This condition may be expected to develop where the child's education has been carried out with great inconsistency and where he has been alternatively overstimulated and harshly rejected.\textsuperscript{134}

In families with poor emotional relationships between parent and child, a faulty development of the ego and superego structure may result in psychopathic acting-out of impulses, although the lack of con-


\textsuperscript{132} Abrahamsen, supra note 131, at 134; Bloch & Flynn, supra note 131, at 144; Bromberg, supra note 131, at 53. See also W. McCord & J. McCord, The Psychopaths (1964).

\textsuperscript{133} T. Moser, Jugendriminalitat und Gesellschaftsstruktur 191 (1970).

\textsuperscript{134} Bennett, supra note 129, at 204.
science will not be acute in the majority of cases. Besides the "true" psychopath, there are many other forms of weakened and underdeveloped conscience.\textsuperscript{135}

Psychopathy is not the only personality disorder which can lead to delinquent acts. The other major type of such personality disorder is denominated as neurotic or symptomatic behavior. A neurotic symptom is the outcome of unconscious conflict, and delinquency can be understood as such a symptom:

The criminogenic pattern of the neurotic offender has been established by his neurotic condition. In this group belong people who carry out criminal acts as the result of obsessive-compulsory afflictions such as kleptomania, pyromania, nymphomania, dromonania, homicidal mania, and gambling ... All obsessive-compulsory persons are emotionally stunted, fixated, and from time to time dominated by irrational ideas, which they understand are unhealthy or wrong but which they cannot resist carrying out. They are driven into actions by unhealthy unconscious drives.\textsuperscript{136}

The percentage of young offenders in whose delinquent behavior neurotic manifestations play a part is thought to be rather high, although statistics are unavailable.\textsuperscript{137} On the other hand, not all neurotics become delinquent, and it has been suggested that "severe early deprivations predispose toward the latter development,"\textsuperscript{138} but evidence is sparse.

Recently, a German psychologist tried to make psychological sense of the frequently reported fact that juvenile delinquency is primarily a phenomenon of the lower-class:

Research on the starting points of delinquent character development has shown that social-structural pressure influencing socialization ability ... weighs heavier on the lower classes. But this burden makes itself felt not only in the lack of objective economic opportunities for juveniles at the point of their entrance into the adult world. This burden influences already their psychic development in earliest childhood, restricting, hindering or destroying the maturation and growth process of the parents. And even these parents may themselves have been subjected to deformations of their personality structures, in a process over many generations of ego restrictions, atrophy of psychic functions, and a brutalization of the relationship to the own self, family and society.\textsuperscript{139}

\textsuperscript{135} F. Redl & D. Wineman, Children Who Hate (1951).
\textsuperscript{136} Johnson, Sanctions for Superego Lacunae of Adolescents, in Searchlights on Delinquency 225-45 (K. Eisler ed. 1949).
\textsuperscript{137} Abrahamsen, supra note 131, at 127.
\textsuperscript{138} Moser, supra note 133, at 217.
\textsuperscript{139} Friedlander, supra note 131, at 116.
This view clearly incorporates some of the structuralist thinking considered earlier, and also serves as a conceptual bridge between traditional personality theories and social-psychological theories of personality.

2. Social-Psychological Theory: Delinquency as Deviant Self-Concept

Characteristic of the social-psychological approach to delinquency is a notion of the delinquent's development of an antisocial self-concept. In this view, the individual begins to conceive of himself as a deviant and organizes his social-psychological characteristics accordingly. In order to understand the distinction between psychological and social-psychological views of delinquency, clarification of "primary deviation" and "secondary deviation" is necessary:

In primary deviation a boy thinks of his act of theft and vandalism as "hell-raising," and sees himself as a "good boy." Secondary deviation would be reflected in the behavior of a juvenile who is heavily involved in misconduct and who views himself as a "tough kid" and a "delinquent."

Primary deviation need not be explained in terms of commitment to deviant codes, norms, or cultures, since these are usually not as clear and unambiguous as assumed by the sociological approach. There is an interaction between the community's standards of behavior and the legal norms which define a delinquent. Because of selective perception and a lack of a complete consensus as to right and wrong, the deviant nature of certain types of conduct may not be clear to the delinquent.

The distinction between primary deviation and secondary deviation implies concurrent distinctions between juveniles' perceptions of themselves. The primary deviant identifies himself as non-delinquent, while the secondary deviant's personal identification is as a delinquent. The origin of self-identification has long interested sociologists, anthropologists, and social psychologists. As long ago as 1902, Cooley coined the term "looking-glass self" in attempting to account for the origin of self identification:

140. E. LEMERT, SOCIAL PATHOLOGY (1951).
141. GIBBONS, supra note 85, at 91.
142. CICOUREL, supra note 86, at 22.
143. C. COOLEY, HUMAN NATURE AND THE SOCIAL ORDER (1902).
Establishment and internalization of self-identity, then, are products of active interpersonal interactions. The youth is pressured by society to behave in accord with his self-identity. Consequently, he tends to develop consistent behavioral roles. The relative importance of various agents of socialization in the development of self-identification was assessed in a study by Lippitt and Withey, the results of which are summarized by Hartup:

Most boys evaluated themselves more poorly than they thought others would. While the boys' own ratings and perceived father-ratings were not markedly discrepant, perceived mother-ratings were slightly more positive than the self-ratings. But the perceived peer-ratings were the most positive of all. These data suggest that the peer group may serve as a primary locus of self-esteem in children.

Adolescence is the time of life where role experimentation is greatest, probably as a function of the youth's search for a self-identification. To whatever extent peer and adult norms differ, conflict, or are ambiguous, the adolescent may experiment with various roles and various self-identifications without necessarily committing himself. In some cases, violation of norms of the larger society may actually earn the approval of some segment of society and thereby be rewarding for the youth. In effect, this permits the juvenile to neutralize formal legal regulations and other social controls by qualifying the norms. Some authors have invoked a concept of "aleatory risk" in this connection. The actor, perceiving the alternatives, including side effects, may choose to act anyway; after he has engaged in deviant conduct, he may then consider the conse-

144. Id. at 152.
145. R. Lippitt & S. Withey, Flint Youth Study (n.d.).
147. Id. at 432.
149. Sykes & Matza, supra note 92.
quences. If he can successfully convince himself that the consequences are slight, he may then conclude that any guilt he feels is trivial. Aleatory risk will not necessarily eliminate the actor’s recognition that his behavior may be delinquent and that others would regard it so.

The ambiguities of social and legal standards, and in techniques of neutralization may permit many juveniles to drift into delinquency without commitment to either delinquency or a conventional way of life, but do not permit a similar drifting out. This drifting process is explained by its principal proponent, Matza, as follows:

The delinquent transiently exists in a limbo between convention and crime, responding in turn to the demands of each, flirting now with one, now the other, but postponing commitment, evading decision. Thus he drifts between criminal and conventional action.151

After having drifted into delinquency, the juvenile may again drift out into a conventional life: “Anywhere from 60 to 85 percent of delinquents do not apparently become adult violators.”152 However, the same percentage of adult criminals have had juvenile records. The entire process of juvenile delinquency may even be viewed as a sort of “twilight zone”: attracting many for various reasons but containing elements of attraction and curiosity from which most are eventually able to escape.

“Drifting out” of delinquency may, however, become impossible because of the so-called “labeling process,” which may begin in school:

There is more than a slight possibility that once a boy gets pointed out as a “bad one” in school records, subsequent reactions of teachers may become heavily colored by that initial judgment. Then, too, the offender’s own self-attitudes and views of others may be influenced by this perception of their opinion of him.153

More important than “labeling” in school is administrative and judicial “labeling.” What may have seemed ordinary from the point of view of the juvenile, the peer group, or even the community may be transformed into something extraordinary through police “labeling.” Well-intended official “treatment” of juvenile offenders may become a lasting stigma:

---

152. Id. at 22.
153. GIBBONS, supra note 85, at 83.
The stubborn label persists despite efforts to erase it. Official agencies perceive it as a mark which warrants surveillance and treatment; the community views it with suspicion and closes doors as the bearer approaches; and perhaps most important, the youth is ever conscious of it, wearing it like an albatross, and adjusting his behavior accordingly. At the least a court record makes it more difficult for a youngster to walk conventional paths and have equal access to the opportunities of society; at the worst, it can propel him to act out further the delinquent role which he has been assigned.\textsuperscript{154}

In a similar vein, the 1967 President's Commission on Law Enforcement and Administration of Justice characterized the juvenile court as benevolent in theory and stigmatizing in practice. In theory the juvenile court was designed to be helpful and rehabilitative rather than punitive, but in practice the distinction is little heeded, due to absences of facilities and limited resources and techniques of those responsible for its operations. Although in theory the court's action is intended to affix no stigmatizing label, in fact the delinquent is generally regarded by society as a criminal; even truants and runaways are labeled as delinquents.\textsuperscript{155} Recent studies have also demonstrated that differential labeling is often based upon notions of "delinquency-proneness" regardless of the seriousness or triviality of the act committed:

The important point is how the juvenile's future is conceived because of readings of his past and present behavior. Notions like "bad attitude," "poor home environment," "emotional problems" and the like, transform the juvenile into an object prepared for disposition. . . \textsuperscript{156}

Middle-income families are usually in a better position to mobilize resources to avoid the stigma of labeling and incarceration, thereby avoiding the dangers of secondary deviation.\textsuperscript{157}

Once the self-conception as a deviant, characteristic of secondary deviation, is achieved, the delinquent youth may play the role completely. In such a case the youth will interact with other delinquent types, look to them for status and rewards, and lose concern for the opinion of the remainder of society.\textsuperscript{158} Guilt feelings will no longer function as a social control because shame cannot cost much to the individual who already suffers the scorn of most of society.

\textsuperscript{155} \textit{Task Force Report: Juvenile Delinquency and Youth Crime} 9 (1967).
\textsuperscript{156} Cicourel, \textit{supra} note 86, at 302.
\textsuperscript{157} \textit{Id.} at 243.
\textsuperscript{158} \textit{Id.}
The distinction between primary and secondary deviation is critically important to environmentalist theories of delinquency. While some of these theories strongly emphasize primary deviation and others emphasize secondary deviation, it is vital to note that all of them recognize those processes whereby primary deviation can develop into secondary deviation. It is clear that when the actor (male or female) does not personally share the values expressed by his behavior, he does not act out of his self-conception; he may simply be responding to demands or pressures of a group. When, however, his self-image is molded in conformity to that of the group and is reinforced by repeated conduct performed at its insistence, primary deviation becomes secondary deviation.

For example, a youth may know and believe that stealing is wrong, and not consider himself a thief; he may steal because his membership in a gang requires that he steal. In this case, his conduct is the product of environmental influence, and that influence may rise to the level of coercion as a function of incentives created by the group which respond to the individual's basic needs, such as the acquisition of status. Primary deviation, however, may gradually be shaped into secondary deviation through continued reinforcement of group incentives. These conditions can become so controlling that what emerges is something of a behavioral addiction.

Furthermore, the way in which the juvenile process currently functions and the ways in which juvenile detentional and correctional facilities are currently operated, the delinquent is likely to receive an administrative release shortly after arrest. Even if found to be a delinquent by the judicial process, the delinquent's chances for probation are high; and even if confined, early release is almost certain. Prompt return of the individual to the milieu instrumental in creating the original delinquency adds a new kind of psychological gratification: to "beat the system." Such a sense of accomplishment could not have been acquired except by violating the law, being channelled through its processes, and emerging victorious. Even then, stigmatization which attaches will operate as part of the overall incentive because it becomes the certificate of accomplishment.

The youth is likely to acquire increased status within the peer group because of the successful outcome of his delinquency. Society's consciousness of his delinquent conduct can only be devalued by the youth; society's opprobrium and ability to enforce its values
and norms can only be regarded as lesser factors in shaping future decisions.

Thus, a gradual transformation of the youth's self-conception occurs in relation to society's worth. Those social values which he may earlier have accepted will lose at least some of their significance in the shaping and maintenance of his self-conception.

A major deficiency of environmentalist concepts of delinquency is their general lack of inter-relatedness. The flow of literature in this area is apparently endless, but that literature consists largely of monologues by experts, each of whom has staked out a narrow specialty and developed it with little or no regard or recourse to others. Developments within environmentalist conceptions of delinquency appear primarily parallel rather than convergent. As is true of constitutional theories of delinquency (as previously noted), a major need exists for an adequate theoretical framework within which to examine available data and to seek new data, as well as to relate the data and findings of the various researchers in the same field.

3. Behavioristic Theory: Delinquency as Conditioning

Probably the most extreme form of environmentalist thinking can be found among those psychologists described as "behaviorists" or "neo-behaviorists." While not necessarily dominating psychological thought in the United States, behaviorism has been and continues to be extraordinarily influential in theory, research, and therapy.

The founder of behaviorism was John B. Watson, who coined the terms "behaviorism" and "behaviorist" and who defined psychology as ". . . a purely objective experimental branch of natural science. Its theoretical goal is the prediction and control of behavior." Although written more than two centuries later, Watson's concepts belong to the lineage of the British philosopher John Locke who conceived the human mind as a tabula rasa (empty slate); that is, the human possesses nothing which he has not gained through experience. Watson's strongest affirmation of this view, and of particular pertinence to the present consideration of delinquency, occurred in a 1925 publication:

Give me a dozen healthy infants, well-informed, and my own specified world

159. J.B. Watson, Behavior (1914).
to bring them up in and I'll guarantee to take any one at random and train him to become any type of specialist I might select—doctor, lawyer, artist, merchant-chief, and yes, even beggar-man and thief, regardless of his talents, penchants, tendencies, abilities, vocations, and race of his ancestors.  

Conditioning would be the means employed to produce these individuals. Conditioning is learning which occurs as a consequence of a process of repeated association of stimulus and response, whereby the responses which are effective in dealing with the stimulus are permanently associated with the stimulus. Such associations do not develop, however, between stimulus and ineffective responses, which are those that do not reward the individual nor enable him to avoid or escape punishment.

The delinquent learns deviant patterns of behavior as a consequence of experiences in dealing with his environment because delinquent behavior is either rewarding or pain-avoiding.

Certainly the most influential of the contemporary behaviorists is B. F. Skinner. Skinner has amply demonstrated that many kinds of animal and human behavior can be "shaped," learned with progressive behavioral refinement, through control of the frequency and amount of reward provided by the "shaper." While in Watson's learning paradigm, the learner is essentially passive, Skinner's paradigm envisions a more actively manipulative learner. Because the learner's responses are instrumental to his learning, this form of learning is called "instrumental conditioning." The learner progressively adopts behavior patterns which maximize his access to rewards available in the environment. Reward need not be delivered each time the appropriate response is given; indeed, Skinner has convincingly demonstrated that periodic reward is far more effective than consistent reward.

Two positions with respect to the origins of delinquency seem possible on the basis of Skinner's concepts. They differ largely on the basis of the kinds of behavior viewed as delinquent. Behavior which is consistently antisocial would represent the results of positive learning. The delinquent has learned to prefer and to seek environmental

160. J.B. WATSON, BEHAVIORISM 82 (1925).
161. The general principles of this type of learning are expressed in an early work, B.F. SKINNER, THE BEHAVIOR OF ORGANISMS (1938).
rewards contingent upon his antisocial behavior. On the other hand, behavior which is inconsistently or spasmodically antisocial is the consequence of a failure to learn socially approved behavior. His environment has inadequately or inconsistently provided rewards for socially desirable behavior.

Unlike many of the theories or approaches to delinquency surveyed here, the Skinnerian framework not only suggests sources of such behavior but also provides a rationale for the treatment of deviance. The author of a recent survey of Skinner's impact upon therapeutic theory and practice summarizes the rationale:

Therapy, even with large groups, must concentrate on the individual or it will not be effective; and its concern is with the here and now, not with some past trauma or some statistical prediction about future performance. But therapy itself should take a back seat to prevention, which is far better and less expensive.

The therapeutic methodology suggested by Skinner has come to be known as "behavior modification." This methodology essentially seeks to remove rewards associated with undesirable behavior and progressively shape, through selective rewarding, socially desirable behavior. That theory does not define what is socially desirable or how to ascertain it and also fails to explain how to control the "controllers."

IV. INTERACTIVE THEORIES—THE BIOSOCIAL OR ETHOLOGICAL APPROACH

Differing sharply from constitutional and environmentalist theories of behavior are a number of theoretical positions which are better characterized as "viewpoints" or "frameworks" than as theories. These diverse viewpoints are discussed in this section as "interactive theories." The interactive viewpoint seeks to re-

164. Id. at 60-62.
165. Successful application of behavior modification practices to juvenile delinquents at the National Training School for Boys has been reported recently in H. COHEN & J. FILIPCZAK, A NEW LEARNING ENVIRONMENT (1971).
166. "Biosocial," "psychobiological," or even "ethological" could also be used as descriptions. These viewpoints share a common emphasis on the interaction of biological and environmental factors, although they frequently appear primarily to emphasize the biological substrate of behavior; this deceptive appearance seems to occur generally as a reaction to the nearly exclusive concern of most theories of behavior with environmental influences.
dress an imbalance long current in American thinking.\textsuperscript{167}

Two more or less distinct concepts of the origins of delinquency and criminality can be derived from the various interactive viewpoints: (1) Delinquency, sociopathy, and criminality may represent failures to internalize behavior-governing social codes at some biologically determined critical point in development; (2) delinquency, sociopathy, and criminality may result from frustrations of biologically determined drives or behavior patterns. The interactive contributions of heredity and environment are clear in both of these concepts.

\textbf{A. The “Critical Period” Concept}

Both the “critical period” hypothesis and the “frustration-aggression” hypothesis are based upon an assumption that behaviors or behavior-potentials are pre-programmed into the individual.\textsuperscript{168} The source of this pre-programming is, presumably, the genetic code.\textsuperscript{169} Development of the individual, both prenatally and postnatally, amounts to a gradual unfolding or disclosure of behavior or dispositions to behavior encoded within the genes which constitute the chromosomal complement. These genes govern characteristics which are derived not only from the individual’s immediate ancestors but from all the pre-existing representatives of his species as well.\textsuperscript{170} The relevance of this concept to the development of behavior is framed in this way by Carmichael:

\begin{quote}
In the ontogeny of human beings and all other mammals . . . the genetic code produces a stage or stages at which adaptive changes are not only made on the basis of ancestral information concerning what is adaptive, in communication between the organism and its environment, but also in the production of a new, vitally important characteristic by means of which new environmental information can produce structural changes basic to in-
\end{quote}

\textsuperscript{167.} See discussion of Environmentalist Theories, pp. 1365-91 \textit{supra}.
\textsuperscript{168.} See note 171 \textit{infra}.
\textsuperscript{169.} \textit{Id}.
\textsuperscript{170.} This general action is not exclusive to the interactionists mentioned in this section. Although presented in a somewhat mystical manner, much the same concept figures importantly in the work of the late C.J. Jung. Jung stated, for example:
In view of the structure of the body, it would be astonishing if the psyche were the only biological phenomenon not to show clear traces of its evolutionary history . . . . Instinct and the archaic mode meet in the biological conception of the “pattern of behavior.”
C.J. JUNG, 8 \textsc{The Structure and Dynamics of the Psyche} 200-01 (2d ed. 1969).
individual habits or other individually determined acts of adaptive behavior. That is, the genetic code determines a level or a series of levels of development at which learning or specific types of learning are possible.\textsuperscript{171}

Although many different "specific types" of learning have been studied in the context of such development, the present discussion is limited to social learning—the learning of social roles and behavior.

The paradigm of a critical period in social learning is the phenomenon of imprinting, which was first reported in 1873.\textsuperscript{172} Recent studies of this phenomenon began in 1935, with the work of Konrad Lorenz.\textsuperscript{173} Since that time the phenomenon of imprinting has been studied by many investigators.\textsuperscript{174} What has been discovered is that in many species of animals, particularly in birds, there exists a critical period in early life during which the animal establishes a specific and enduring attachment to some object. In nature this object of imprinting will normally be the mother, but laboratory and field studies have amply demonstrated that even lifeless objects may serve the same function. Subsequently the animal's normal social behavior, sometimes including courtship behavior, will be directed toward individuals or objects resembling the imprinting object. For example, Lorenz demonstrated that goslings imprinted upon him subsequently followed him in the same manner they would have followed their natural mother and even followed him in preference to their natural mother.

While the specific applicability of imprinting to humans has not been established, there is no doubt that children do form strong and close personal attachments to familiar persons quite early in life. The important question is whether such attachments occur primarily or exclusively during some "critical period." Goldfarb\textsuperscript{175}

\textsuperscript{172} Id. at 464.
\textsuperscript{175} Goldfarb has reported his study in a series of four articles: \textit{Effects of Psychological Deprivation in Infancy and Subsequent Stimulation}, 102 A.M. J. Psych. 18 (1945); \textit{Psychological Deprivation in Infancy and Subsequent Adjustment}, 15 A.M.
compared two groups of children: one group consisted of fifteen children who had lived in an orphanage-type institution until the age of three and were then placed in foster homes; the second group consisted of fifteen children who had been placed in foster homes prior to the age of one year. The first group were found to be inferior to the second group in intelligence, conceptual ability, and speech. Socially they were immature and unpopular, aggressive, and unable to form genuine attachments to people despite their own constant demands for affection. They were also unable to adhere to rules or to display guilt after deviation from rules.\textsuperscript{176}

The effects of social isolation in early life upon subsequent social behavior have been studied in a number of animal species. Scott and Fuller\textsuperscript{177} have identified the time between four and fourteen weeks of age as the "socialization period" in the dog. This is the time during which the strongest social attachments are formed, and social isolation during that period severely hinders later social behavior. Isolation during adulthood does not appear to have similar antisocial consequences.

Harlow and his associates\textsuperscript{178} have studied extensively the effects of early social isolation upon subsequent social behavior in the monkey. Relatively brief isolation appears to have relatively brief, but severe effects. Prolonged isolation—for the infant's first six to twelve months of life—profoundly disturbs all of the infant's affectional relations, including heterosexual relations and maternal behavior. In the case of humans, total early social isolation is virtually impossible, due to the human infant's extraordinary helplessness. The effects of relative isolation, however, have been noted in many studies of institutionalized children. Citing many of these studies in a World Health Organization report, Bowlby\textsuperscript{179} concluded

\begin{thebibliography}{9}
\bibitem{176} Cf. articles cited in note 175 supra.
\bibitem{177} J. Scott & J. Fuller, Genetics and the Social Behavior of the Dog (1965).
\bibitem{178} Results of studies by these investigators are reported in Harlow, Total Social Isolation: Effects On Macaque Monkey Behavior, 48 Science 666 (No. 3670, 1965).
\bibitem{179} Bowlby, Maternal Care and Mental Health, (WHO Monograph No. 2 1952).
\end{thebibliography}
that early social deprivation leads to an irreversible retardation of physical, intellectual, and social development and that such effects were more serious if deprivation occurred during the infant's first six months of life. According to Bowlby, various kinds of social deprivation, having in common lack of opportunity to form an attachment to a mother-figure and occurring during the child's first three years, may lead to the production of an affectionless and psychopathic personality. It must be noted, however, that Bowlby subsequently modified his position by removing much of the inevitability of the consequences of social deprivation. 180

The physical and intellectual retardation commonly noted in institutionalized children is generally believed to be due to a lack of stimulation and opportunities for learning. The social and emotional consequences of social isolation or deprivation appear to result from similar lack of opportunity for social and emotional learning. In the absence of such opportunities, the child seems to remain stunted at emotional and social levels inappropriate to his advancing age. 181 The picture of such a child is that of a self-centered and emotionally flat individual: a picture remarkably similar to that of the sociopathic delinquent.

As to whether deficits resulting from social deprivation are reversible, opinions are divided. Provence and Lipton182 studied institutionalized children, and observed the kinds of developmental retardation discussed here. Continuing to study these children after they had been placed in foster homes, improvement was noted, but the children were unable to use the foster-mother as a source of comfort and help. They were indiscriminately friendly and had difficulty in controlling their impulses and in tolerating delays in reward. McCandless183 believes that enrichment programs designed to remedy deficits, at least in the area of intellectual abilities, caused by early deprivation can be successful if the enrichment can be maintained for a sufficiently long time. Harlow's work with

181. An excellent review of human infant deprivation studies, criticisms of these studies, and possible explanations for observed effects is provided by Thompson & Grusec, Studies of Early Experience, in 1 CARMICHAEL'S MANUAL OF CHILD PSYCHOLOGY 565, 603-11 (3d ed. P.A. Mussen 1970).
monkeys suggests that most deficits in affectional behavior attributable to early isolation can be corrected.  

A number of models or conceptual frameworks have been formulated to account for and incorporate critical periods in the development of behavior. Thompson, for example, suggests that there are three major developmental stages: a "temperament adaptation zone," an "affective-meaning zone," and an "instrumental-meaning zone." In the first of these the infant learns a characteristic level and range of responsiveness to the environment. In the second stage, the infant learns the objects or persons ("cues") to which particular emotional responses are to be given. In the third stage, the child learns to manipulate his environment. While the ages at which each stage is passed may vary somewhat from child to child, the sequence of stages does not change. Thus, there occurs a progressive "unfolding" of the individual's genetic makeup and progressive interaction with his environment. In Thompson's scheme, the stages of development are genetically determined, while the incorporation of experience specific to each stage is environmentally determined. Delinquency, then, can be viewed as the result of the individual having learned a specific level and range of responsiveness (e.g., over-reaction or under-reaction) and having come to associate that responsiveness with certain environmental objects or events (e.g., authority figures or the school environment). To the extent that his behavior is socially inappropriate, he will be characterized as a delinquent.

B. The "Frustration-Aggression" Concept

While the "critical period" hypothesis relies extensively upon data from animal studies, no absolute continuity between man and other species of animals is essential to the hypothesis. However, the "frustration-aggression" hypothesis relies absolutely on a genuine continuity of species. The real ancestor of this hypothesis is Charles Darwin, founder of the theory of evolution. The core of Darwin's

186. Id.
187. Although variants of a concept of evolutionary development had appeared earlier, Charles Darwin is generally credited as the "father of evolutionary thought"
theory is the notion that individuals possessing characteristics necessary to survival in a particular environment will survive and propagate, while individuals lacking those necessary characteristics will die. This notion of the "survival of the fittest" was first enunciated by Darwin in 1859.\footnote{188} Darwin applied evolutionary concepts more specifically to man in a subsequent publication.\footnote{189} In both these works, and in the works of many subsequent writers, the concept of man-animal continuity is made explicit and emphatic.\footnote{190}

Acceptance of this continuity allows its proponents to employ animal studies not as analogies but as directly applicable to human behavior. Ethology, the study of animal behavior, becomes a science of man as well. Fundamental to the ethological viewpoint is the idea that much of behavior, both human and non-human, is innately determined. In some cases an entire behavioral sequence may be pre-programmed genetically, while in other cases only the motivational basis of the behavior may be pre-programmed. The major task of the ethologist is to unravel the relative contributions of heredity and environment in each behavioral sequence.\footnote{191}

The assumption of man-animal continuity allows ethologists to extrapolate between man and other species; ethologists have demonstrated no reluctance to do so. Within recent years, they have increasingly turned their attention to human behavior and human institutions; their conclusions and admonitions have stirred perhaps the widest controversy in contemporary social and behavioral science theory and research.\footnote{192}

One of the major social problems to which the ethological school has addressed itself is that of human aggression and violence.\footnote{193} It is for this reason that ethological concepts are specifically rele-
vant to the consideration of delinquency. It is a popular belief that
the behaviors which are identified as “social problems” are pecu-
liarly human; they include such “social problems” as aggression,
antisocial behavior, and suicide. The ethological approach begins
with an analysis of the behavior, its apparent motivation, and its con-
sequences, and then attempts to identify similar patterns in other
species. At this stage Darwin’s fundamental concepts are particularly
useful, since they largely simplify motivation into two categories:
survival and reproduction. Aggressive behavior may serve either mo-
tivation.

In effect, the ethological approach asks whether aggression oc-
curs in other species and, if so, under what circumstances. Cer-
tainly the single most influential ethologist who has sought to ana-
lyze aggression is Konrad Lorenz.194 Lorenz’s On Aggression195
has been the single most influential ethological consideration of this
topic. In this work, Lorenz notes his indebtedness to Darwinian
thought and quickly establishes the basic concept of his book:

Darwin’s expression, “the struggle for existence,” is sometimes erroneously
interpreted as the struggle between different species. In reality, the strug-
gle Darwin was thinking of and which drives evolution forward is the com-
petition between near relations.196

The key word here is “competition.” The competitive struggle
referenced by Darwin, and subsequently by Lorenz, is not a pas-
sive encounter. Instead, the individual is innately impelled toward
active competition with his conspecifics. As Lorenz notes,197
earlier proponents of instinct theories of behavior had vigorously
denied Descartes’ maxim: Animal non agit, agitur; in their view
the more correct reading would be: Animal non agitur, agit! This
view strikingly opposes the environmentalists’ concept of man as
the helpless victim of society, passively shaped by forces and figures
outside himself.

The competitive spirit, in Lorenz’s view, is the primary instru-
ment of evolutionary development and is, therefore, present in ev-

194. Lorenz is also the modern proponent of the theory that imprinting is critical
to social behavior in some species. See p. 1393 supra.
196. Id. at 23.
197. Id. at 51.
ery individual of every species. Aggressiveness is, in a sense, the energy level of competition or the expression of the competitive spirit. Aggression is not intrinsically “evil,” according to Lorenz: “. . . the aggression of so many animals toward members of their own species is in no way detrimental to the species but, on the contrary, is essential for its preservation.” Aggression ensures the preferential selection of those individuals who contribute maximally to the continuation of the species.

But while aggression, which figures so prominently in all concepts of delinquency and criminality, is not morally opprobrious, the ethological perspective does admit negative and positive expression—for example, competition between scientists to discover new facts of nature. Negative aggression is expressed in the form of competitive struggles which clearly do not advance the species.

Delinquency and crime are forms of negative aggression. Lorenz accounts for these as accidental, if not inevitable, consequences of the failure of social institutions to accommodate man’s innate aggressiveness. Lorenz argues that “. . . man’s whole system of innate activities and reactions is phylogenetically so constructed, so ‘calculated’ by evolution, as to need to be complemented by cultural tradition.” This “cultural tradition” consists of social values, norms, and rituals which channel innate behavior patterns, specifying disapproved behaviors but allowing for appropriate substituted behaviors. The lack of such values, norms, and rituals in contemporary society is responsible for contemporary social problems:

In our time, one has plenty of unwelcome opportunity to observe the consequences which even a partial deficiency of cultural tradition has on social behavior. The human beings thus affected range from young people advocating necessary if dangerous abrogations of customs that have become obsolete, through angry young men and rebellious gangs of juveniles, to the appearance of a certain well-defined type of juvenile delinquent which is the same all over the world. Blind to all values, these unfortunates are the victims of infinite boredom.

Legal and moral prohibitions of aggressiveness may not only be use-

198. Id. at 49.
199. Id. at 41.
200. Id. at 265.
201. Id. at 266.
less, but also socially undesirable. They are useless because aggressiveness is a biologically determined characteristic selectively inbred through all man's evolutionary history, and socially undesirable because aggressiveness provides the impetus for man's constructive behavior as well as his destructive behavior. Aggressiveness must be controlled by redirecting the aggressive drive, by developing social codes and institutions which more adequately provide for its constructive expression. Those who frame and administer society must be aware of man's innate aggressiveness and must conscientiously participate in the necessary social restructuring.

While Lorenz's views have been influential primarily among his fellow scientists, a wider influence has resulted from the writings of Robert Ardrey, a playwright turned ethological social theorist. It is Ardrey who has given the views of Lorenz and other ethologists their widest voice, particularly in The Social Contract. Ardrey, even more specifically than Lorenz, addresses himself to the problem of social violence, its causes, and its cures:

Violence . . . is the pursuit of conventional prizes by unconventional means. When social partners can no longer accept the same rules and regulations, then violence becomes the normal pathway of departure. And it is a paradox that the more successful the violation, the more certain will be its ultimate failure. Order must prevail if men themselves are not to perish. But in the course of such reconstruction of the social contract, many a man has seen freedom perish.

The threats to society imposed by violence tend too easily to lead to repressive measures which just as surely destroy the social fabric.

Ardrey posits the existence of "three innate needs which demand satisfaction": a need for identity (non-anonymity), a need for stimulation (non-boredom), and a need for security (non-anxiety). These constitute a hierarchy such that, as the need for security is satisfied, the need for stimulation becomes more pressing; and, as the need for stimulation is satisfied, the need for identity becomes more pressing. Historically these needs were satisfied within the small-group structure which characterized society. Modern, industrialized society, however, has largely eliminated the small group as a functional unit. Multinational corporations and endless anony-

203. Id. at 255.
204. Id. at 289.
mous assembly lines have replaced cottage industry and the small workshop; the extended family has dispersed into scattered nuclear families. The groupings of contemporary society are either too large or too small to satisfy adequately man's innate social needs. Yet these needs, because they are innate, will not be denied; they will find expression in antisocial behavior. Similar to Lorenz, Ardrey sees a critical need for social restructuring to provide the values, norms, and institutions required by our biological inheritance.

Ethological concepts of aggression have assuredly not gone unchallenged. Indeed, the magnitude of the opposing response has been remarkable. Probably foremost among the opponents of an innate or instinct theory of aggression is the noted anthropologist M. F. Ashley Montagu. The essence of Montagu's argument is that the existence of human instincts has not been proved and that aggression in particular is learned behavior.

V. CONCLUSIONS

In 1762, Jean-Jacques Rousseau published *The Social Contract*, and in its opening line he stated: "Man is born free; and everywhere he is in chains." The source of man's enslavement, according to Rousseau, is society and its institutions. Rousseau's thoughts have since profoundly influenced Western society.

The prevailing view of man during most of the history of Western civilization has been inspired by Christian Theology. Man was seen either as inherently good or bad. As the bearer of original sin (a theological doctrine) he was essentially deemed inherently evil and sinful, but capable of transformation through the ministrations of a transcendental social agency, organized religion. Rousseau (as well as many others) flatly contradicted this view, insisting instead that man is inherently good and is rendered evil only by society. To a remarkable extent these contradictory views are embodied in biological and sociological theories of delinquency and criminality which have been considered above. If man is inherently evil, that evil must be represented in the "bad genes," and it can be rectified only through genetic manipulation. If, however, man is inherently good

---

205. See, e.g., the numerous articles reprinted by Montagu, *supra* note 192.


and is corrupted only by society, then social engineering is required to restore order to the world.

Contradictory though these opposing views may be, they share a common denial of responsibility—humans cannot be accountable because those factors which shape them are beyond their exclusive control. Yet the evidence mustered by supporters of each approach is counterbalanced by evidence gathered in opposition. Some evidence does exist, although scant in quantity and doubtful in quality, that a kind of "genetic criminality" is real. Moreover, voluminous evidence exists that particular environments foster particular behaviors.

Increasingly scientists are coming to view people and their behavior as the interactive product of heredity and environment. But the crucial fact is that each man's heredity and environment are unique to him. The thousands of genes which constitute each individual's gene complement recur in another individual with an extraordinary improbability. Similarly, each individual exists in a unique environment of time, place, and circumstances. Hence it follows that each individual is unique, and, therefore, no monolithic view of man can be satisfactory.

The uniqueness of the individual implies a need not for a "human equation" but for a myriad of "human equations." The interactive view of man necessarily denies human equality, for not all humans are equally blessed genetically, and not all are equally blessed environmentally. "Bad genes" perhaps can be suppressed or counteracted by a "good environment," and, clearly, "good genes" can be suppressed by a "bad environment."

If the concept of equality cannot figure in the interactive view, the concept of freedom of choice may appear to be in jeopardy, and with it the concept of legal responsibility. It is necessary to understand, however, the role of genetic inheritance in interactive theory. Under this view, genes do not determine what the individual will be, but only what he can be. That is, genes establish the potential and determine the limits of the individual. What happens subsequent to the moment of genetic determination (that is, the moment of conception) can only reduce or limit his potential. "Freedom," as used by interactionists, refers to lack of restraints upon the expression of human potential.

208. See pp. 1363-65 supra.
It is clearly nonsense to ascribe "freedom" or social responsibility to the genetically determined idiot, and it is equally nonsensical to deny social responsibility to the individual of superior genetic endowment. All-or-none concepts of responsibility and freedom cannot figure in an interactive view of man. In their place a concept of *degrees of freedom* must be entered: a notion that just as some men are created more equal than others, so some men are more free than others.

Society, too, has a responsibility in the interactive framework as it must guarantee the individual the freedom to reach his potential, to be the most he can be. Social structures, in general, are not so designed; social latitudes tend to be narrow and rigid, accepting those who conform to relatively narrow values (e.g., a materialistic orientation or subscription to the work ethic). In this way, society structures the environment for the individual, regardless of whether that environment maximizes freedom, while also ignoring the individual's personal equation.\(^{209}\)

The strict constitutionalist must view delinquency as Lombroso did, as genetic predetermination. The strict environmentalist must reach a similarly depressing conclusion, that the individual is environmentally predetermined. Clearly sufficient evidence exists to deny both views as significantly accounting for delinquency and criminality. What appears more probable is that while a small percentage of delinquents may be genetically foredoomed and a small percentage of delinquents may be environmentally foredoomed, the majority of deviants owe their deviancy to an interaction of heredity and environment—that is, to the existence of a genetic potential in an environment ill-suited to its expression. Since at the present time genetic engineering is an impractical resolution of this difficulty, major emphasis should be placed upon social restructuring and the creation of social institutions better suited to the expression of desirable social characteristics. This social restructuring should emphasize the establishment of more options and opportunities for persons to seek and explore a wider variety of environments in search of those best suited to the personal equation.

\(^{209}\) If each individual's genetic endowment is unique, and if each individual exists in a unique environment, it follows that the interaction of these two influences produces for each individual a unique "personal equation."
A threshold question is the relationship of law and science. Is the role of science one of informational input into the law or does it also shape and contribute to the definition of values which law embodies in its prescriptions? To a large extent law is devoted to the preservation of the existing order. The inarticulated premise of this legal conservatism is that existing social values reflected in social institutions are those which are most appropriate to human needs and thus deserve preservation. According to this position, the role of science in relation to law is one of input. Science provides data and alternatives so that, in the words of one scientist, it will not undermine the independent basis in human experience for these activities . . . [because] much wisdom is built into legal institutions, along with much folly. Unfortunately when we undermine an institution we deprive ourselves of the wisdom as well as rid ourselves of the folly.210

A different position is that a more dynamic interaction between law and science might well promote the more rapid implementation of emerging values which might indeed be better suited to the evolutionary needs of society. Ideally “law” as an institutionalized social process embodies the basic human drives and values of the collectivity in an effort to preserve what that collectivity does at its best and to guard against what it does at its worst.

Theoretically, there is a relationship between the law as a shaper of behavior through the values embodied in its prescriptions and behavior which reflects values which may or may not be embodied in or recognized by the law. In practice, however, there is no genuine reciprocal relationship between law and human behavior which permits the type of cross-fertilizing interaction needed to give the law the dynamic vitality it should have if it is to be a flexible response to social needs and an instrument of social planning.

An example of this lack of relationship is when the law resorts improvidently to prevention and control schemes to regulate certain behavioral aspects which are treated as “delinquent” and “criminal” by contemporary statutes, court decisions, and law enforcement action, when these aspects do not deserve an official punitive interven-

Yet with respect to behavior that merits official intervention and which must be preceded by preventive measures, this is seldom the case.

Another question is, "Where does the criminal law stand with respect to social conflicts?" It is obvious that existing penal institutions are not designed to offer alternative mechanisms for the resolution of social or interpersonal conflicts and thus they stand ineffectively midway between what has been and what is to be without significant impact on either situation. To that extent, the law for the deviant is merely the corridor he passes through from the conditions giving rise to his deviancy to some outcome which has little or no impact on his resocialization. Thus the criminal law's performance as an instrument of social policy is never tested.

The criminal law is a system embodying multiple processes functioning without any definite framework for analysis of its performance. What is called the "criminal justice administration system" is nothing more than a juxtaposition of multiple processes embodying different value-oriented goals in which the method of inquiry and outcomes are not necessarily designed to insure either consistency, continuity, or systematic flow. In that system, inquiries are directed to "what" has been done rather than "why" it has taken place. This position is secure because the inquiry into facts is what law and legal institutions do best. Furthermore, it shields such legal institutions from any accountability for the causes and consequences of deviant or criminal behavior. The criminal law can easily shrug off responsibility for the causes of deviancy and criminality and equally wash its hands of the problems of rehabilitation and re-socialization.

In that role the criminal law becomes the broker between pre-existing social conditions and conditions subsequent to its intervention and over which it claims no control. In this respect science has little to

211. There are just too many trivial matters which become crimes and thereby lessen the significance of the word, and increase the number of those who could potentially be so labelled. One should only recall that "adultery" and "fornication" are still crimes in many states, and that if the celebrated Kinsey Report was correct, over half of the population in the mid-fifties was "criminal." All such "crimes" as those regulating private morality and decency; narcotics, drunkenness, vagrancy, and gambling increase the chances that a greater percentage of society could be labelled as "criminal," and that may in part account for the "increased crime rate." See Kadish, The Crisis of Overcriminalization, 374 The Annals 157 (1967); N. Morris & G. Hawkins, An Honest Politicians' Guide To Law Enforcement (1970).
offer it, and criminal law can easily do without science. If, however, the role of criminal law and its structures is to be an integral and integrated part of the social process, it cannot remain in this “intermediate” position. In such a case it must actively interact with all the phases and aspects of society which it touches, affects, or is likely to touch or affect. In this respect science becomes an integral interactive part of criminal law because criminal law is an integral interactive part of society, and science is what provides us with the data to respond to social needs. It is to those value-oriented goals that science must address itself by constantly providing the basic testing experiments and alternatives which, when sorted out by the processes of human experience, provide the desired end. It is therefore data on human experience which science can best provide the law. These data must find their input into the law at two levels: the formulation of legal policy; and the administration of legal processes.

The following are specific recommendations:

1. The education and training of persons involved in all levels of legal and judicial processes concerned with the prevention and control of delinquency and criminality should include intensive study of scientific theories of such behavior and research proceeding from these theories.

2. Mechanisms should be established whereby scientific theory and research data could more directly influence legal thought and institutional processes. Court systems, law schools, and bar associations, particularly at the national level, should establish advisory groups composed of legal scholars, practicing lawyers, jurists, and scientists to provide more immediate access to theory and data relevant to the formulation, revision, and implementation of laws and those processes concerned with delinquency and criminality. Such agencies should actively encourage closer cooperation between law and interdisciplinary science. Such agencies should cooperate in funding scientific research.

3. Agencies concerned with facets of law enforcement should employ scientific methods to evaluate their own performances in relation to defined objectives, legal standards, and current social values. Such evaluative data should be found useful in defining policies and procedures and shape those in need of revision or reformation.
4. The strictly objective standard of criminal accountability should be replaced by a subjective standard more likely to embody the realities of human behavior and its motivations. Such a standard would facilitate the development and implementation of more enlightened and effective criminological policies.

5. Distinctions between juvenile delinquency and adult criminality should be abandoned and replaced by a dual level of inquiry:

(a) Phase I would be devoted to the identification and ascertainment of material factors deemed antisocial.

(b) Phase II would be devoted to inquiries with respect to disposition of the individual.

In effect, this dual level approach requires a true division of the trial into two phases: adjudication and disposition. The first phase would be the responsibility of the jurists employing legal criteria; the second phase would be administered by trained experts on the basis of scientific criteria, but subject to minimum due process standards.

6. Criminalization policies should be reformulated so as to be applicable only to ascertainable social harm which can be controlled through official intervention, thereby requiring the decriminalization of antisocial behavior which does not rise to the level of social harm warranting official intervention of the criminal processes.

7. The interests of crime victims must be taken into account in substantive and procedural criminal law.

A new framework for the analysis of antisocial behavior and its outcomes for the social deviant is urgently needed. These recommendations must not, however, be interpreted as a lack of concern for the victim of crime or for society's overall interest in the preservation of its social order. A criminal justice system firmly based on confirmed scientific theory would serve these varied but coextensive interests of society. Such a system, however, can only succeed if the overall thrust of social and community interest is channelled in the same direction. To deal with the social deviant or offender, albeit in an enlightened way is no substitute to the eradication of the causes of such behavior.